In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-486

FEDERAL POWER COMMISSION, PETITIONER

v.

MEMPHIS LIGHT, GAS AND WATER DIVISION

No. 72-488

TEXAS GAS TRANSMISSION CORPORATION, PETITIONER

v.

MEMPHIS LIGHT, GAS AND WATER DIVISION

WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

INDEX

	Original and Certified Trans. Page	Appendix Page
Description of document:		
Relevant docket entries		iv
Order allowing certiorari, No. 72-486		vi
Order allowing certiorari, No. 72-488		vi
Excerpts from transcript of proceedings	60-1018	2-40
Witness:		
W. M. Elmer:		
Prepared testimony	75	2
Cross-examination	891	31
Virgil W. Meythaler:		
Testimony re Exhibit Nos. 5 and 6	84	7
Rebuttal testimony	588	23
Cross-examination	973	32
William J. Powell	501	20
Melwood W. Van Scoyoc—prepared direct testimony	568	23

	Original and Certified Transc. Page	Appendix Page
Exhibits	1214–1281	41–46
No. 20—A one-page document entitled "Texas Gas Transmission Corporation Analysis of Growth of Gas Utility Plant in Service for the Years 1957 through 1968"	1214	41
No. 21—A one-page document entitled "Analysis of the Effect on Texas Resulting from the Use of Liberalized Tax Depreciation on a Flow Through Basis Combined with the Reduction in Taxes Because of a Declining Net Investment in Plant 1"	1215	42
No. 22—A multi-page document entitled "Proposed Change to Straight Line Depreciation for Tax Purposes	1216	43
No. 32—Comparison of Total Federal Income Taxes Under Straight-Line or DDB Depreciation Assuming 100% Equity Financing	1279	44
No. 33—Comparison of Annual "Cost of Service" Reductions Due to Decline in Return and Federal Income Tax Requirements on the Basis of (1) Reverted Straight-Line Tax Depreciation and (2) Continued Liberalized Depreciation with Flow-Through and Ability to Absorb Annual Wage Increases	1281	46
Documents:		
Texas Gas Transmission Corp. Proposed Rate Increase to be Effective, 8/12/69, RP69-41, Received June 27, 1969	1393	47
Notice of Proposed Changes in Rates and Charges, RP69-41, Issued 7/3/69	1833	57
Memphis Light, Gas and Water Div. Motion to Reject Rate Filing, Received July 14, 1969	1835	58
Order Providing for Hearing, Suspending Proposed Alternate Revised Tariff Sheets, and Denying Motion to Reject Rate Filing, Issued Aug. 11, 1969	1880	64
Order Permitting Interventions, Issued September 16, 1969	1992	70
Presiding Examiner's Report to Omit Initial Decision, Dated December 15, 1969	2007	81
Notice Granting Motion for Waiver of Intermediate Decision, Issued December 23, 1969	2009	82
Western Kentucky Gas Company Memorandum Initial Brief, Received January 16, 1970	2241	83
Order Permitting Interventions, Issued October 20, 1969	1969	71

	Original and Certified Trans. Page	Appendix Page
Memphis Light, Gas and Water Division Petition to Intervene and Objection to Waiver of Commission Regulation Respecting Purchased Gas Adjustment Clauses, RP70-14, Received Dec. 1, 1969	2086	72
Order Permitting Tracking of Purchased Gas Increase, Suspending Proposed Revised Tariff Sheets Pending Effectiveness of Supplier Rate Increases, and Consolidating Proceedings, Issued Dec. 15, 1969	2092	76
Commission Staff Reply (Excerpt), Received February 6, 1970	2375	88
Texas Gas Transmission Motion for Expedited Decision on Limited Issue, Received 5/4/70	2691	90
The City of Hamilton Answer to Motion for Expedited Decision on Limited Issue, Received May 8, 1970	2720	94
Texas Gas Transmission Supplemental Information to Motion Filed 5/4/70, Received May 25, 1970	2731	97
Opinion No. 578, Opinion and Order Granting Permission to Use Liberalized Depreciation with Normalization for Accounting and Rate Purposes, Issued June 3, 1970	2738	100
Texas Gas Transmission Motion for Approval of Settlement, Received June 12, 1970	2749	112
Memphis Light, Gas & Water Division, Application for Rehearing, Received June 29, 1970	2783	118
New York Commission Answer to Motion for Approval of Settlement, Received June 30, 1970	2799	123
New York Commission Application for Rehearing and Reconsideration, Received July 2, 1970	2803	125
Texas Gas Transmission Response to Answer of the New York Commission, Received July 6, 1970	2827	130
Philadelphia Gas Works Division of UGI Corporation Petition for Rehearing, Received July 6, 1970	2835	133
Order Approving Rate Settlement, Issued July 17, 1970	2845	137
Opinion No. 578-A, Opinion and Order Denying Rehearing, Issued July 21, 1970	2852	145

Relevant Docket Entries

The Commission Proceedings

1969

June 29	Filing by Texas Gas of rate increase in FPC Docket No. RP69–41
July 3	Notice issued in FPC Docket No. RP69–41
August 11	Order suspending rate for five months and setting case for hearing in FPC Docket No. RP69–41
November 7	Filing by Texas Gas of rate increase in FPC Docket No. RP70–14
November 12	Notice issued in FPC Docket No. RP70–14
December 15	Order suspending rates in FPC Docket No. RP70–14 and consolidating that docket with FPC Docket No. RP69–41
May 4	Texas Gas elects under Order No. 404 and Section 441(a)(4)(A) of the Tax Reform Act of 1969 to abandon flow-through for post-1969 non-expansion property
May 22	Texas Gas, by letter, indicates its desire to abandon flow-through on pre-1970 property and post-1969 non-expansion property

1970

June 3	Issuance of Commission Opinion No. 578
July 21	Issuance of Commission Opinion No. 578–A, denying rehearing of Opinion No. 578

THE COURT OF APPEALS PROCEEDINGS

1970

August 7.....	Petition for review filed by Memphis Light, Gas and Water Division on Docket No. 24517
September 4.....	Motion of Texas Gas Transmission Corporation to intervene in Docket No. 24517
September 16.....	Petition for review filed by Public Service Commission of the State of New York in Docket No. 24632
September 21.....	Order granting Texas Gas' motion to intervene in Docket No. 24517
September 23.....	Motion of Texas Gas to intervene in Docket No. 24632
October 8.....	Order granting Texas Gas' motion to intervene in Docket No. 24632

1972

February 18.....	Opinion and judgment of Court of Appeals vacating judgment of Commission and remanding to Commission for further proceedings
March 24.....	Petitions for rehearing and suggestion for rehearing filed by both the Commission and Texas Gas
March 24.....	Motion of Texas Gas for leave to file document entitled "General Explanation of the Tax Reform Act of 1969"
April 5.....	Per Curiam order granting Texas Gas' motion to file document entitled "General Explanation of the Tax Reform Act of 1969"
May 11.....	Opinion and order of Court of Appeals denying petitions for rehearing

Supreme Court of the United States

No. 72-486

FEDERAL POWER COMMISSION, PETITIONER

v.

MEMPHIS LIGHT, GAS AND WATER DIVISION, ET AL.

ORDER ALLOWING CERTIORARI. Filed December 4, 1972.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 72-488 and a total of one hour is allotted for oral argument.

Supreme Court of the United States

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U.S. GOVERNMENT PRINTING OFFICE: 1973

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. [illegible]

[illegible] Power Commission, Petitioner

v.

[illegible] Power Commission, Respondent

No. [illegible]

[illegible] Power Commission, Petitioner

v.

[illegible] Power Commission, Respondent

On Petitions To Review an Order of the
Federal Power Commission

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,517

MEMPHIS LIGHT, GAS AND WATER DIVISION, *Petitioner*

v.

FEDERAL POWER COMMISSION, TEXAS GAS TRANSMISSION CORPORATION, and TENNESSEE VALLEY MUNICIPAL GAS ASSOCIATION, ET AL., *Respondents*

No. 24,632

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, *Petitioner*

v.

FEDERAL POWER COMMISSION AND TEXAS GAS TRANSMISSION CORPORATION, *Respondents*

On Petition To Review an Order of the Federal Power Commission

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JOINT APPENDIX

69

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Presiding Examiner: Under the circumstances, I will rule that the proceeding will be tried in two phases, two phases for trial and decision.

In Phase 1 the issues of rate of return and related income

70

tax will be tried, and the issue of the return from accelerated to straight line depreciation, insofar as the principle thereof is involved.

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75

Prepared Testimony of W. M. Elmer

Q. Please state your name and address. A. W. M. Elmer, 3800 Frederica Street, Owensboro, Kentucky.

Q. What is your present occupation? A. I am chairman of the board of directors and chief executive officer of Texas Gas Transmission Corporation.

Q. Please give your educational and business background. A. I received my college degree in 1936 from the University of Illinois. I am a certified public accountant. From 1936 until 1947, except for a period of service in the United States Navy, I was employed by Arthur Andersen & Co., public accountants and auditors. During this period, I did extensive consulting work for various utilities, and supervised the audit of the accounts of numerous utilities. In June of 1947, I was employed as the comptroller of Memphis Natural Gas Company, a predecessor of Texas Gas. When Texas Gas Transmission Corporation became an operating company in 1948, I became comptroller of that company. Subsequently, I served as treasurer, vice president, senior vice president, executive vice

president, and in 1957 I became president of the company. In 1968 I was elected to my present position.

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78

Q. Mr. Elmer, are you familiar with Mr. Meythaler's testimony relating to the reasons why Texas Gas is seeking permission to revert to a straight-line method of computing tax depreciation? A. Yes, I am.

Q. Do you know of any reasons, other than those described by Mr. Meythaler, which led the management of Texas Gas to seek permission to revert to a straight-line method of computing tax depreciation? A. I don't know any additional reasons. I would like to elaborate on

79

several of the points which Mr. Meythaler has already covered.

Q. Will you please indicate the points to which you refer? A. I am referring to the changed circumstances which now confront the pipeline industry generally, and Texas Gas in particular, in comparison to the situations which existed at the time of the Commission's decision in the Alabama-Tennessee Case (31 FPC 208 1964).

Q. What are these changed circumstances? A. At the time of the Commission's decision in the Alabama-Tennessee case, which reversed its prior policy with respect to liberalized depreciation, there was no particular problem as to the availability of future gas supply or with respect to projecting future industry growth to meet the ever increasing demand for natural gas.

With respect to gas supply, the Commission, in Alabama-Tennessee, stated:

"We do not dispute the contention that economically extractable gas reserves will suffer exhaustion at some indeterminate future date. However, we knew of no re-

liable claim that such exhaustion of gas supplies is certain or even probable within this century. The fact that our gas reserves may be exhausted in the 21st century certainly does not establish that there is a present need for additional normalization." (p. 218)

With respect to future industry growth and investment in plant, the Commission stated:

"Almost all responsible forecasts reflect the widespread belief that the gas pipeline industry will continue to expand at least until 1980. . . . Senate Committee on interior and Insular Affairs, . . . concluded (at p. 37 of the Report) that the use of gas in 1980 will be somewhat less than doubled the 1960 usage and observed that the majority of the pertinent estimates clustered in the range between 20 and 23 trillion

cubic feet. * * * Although these estimates relate to gas consumption rather than to the capacity of gas pipeline plant, it is fair to infer that an approximate doubling of sales will generate a roughly proportional increase in plant investment." (pp. 217-218)

Today, however, the entire industry is faced with a very serious problem relating to the availability of natural gas reserves with respect to the expansion of service as well as service to existing markets. I feel that, with the assistance of the Federal Power Commission in its price fixing policies, the gas shortage problem can be alleviated.

On the other hand, I am also convinced that the problems involved in acquiring and providing long-term gas supply, on an economical basis, are much more serious today than existed at the time of the Alabama-Tennessee decision.

Q. Mr. Elmer, will you please indicate some of the problems to which you are referring? A. Yes. The cost of

natural gas today delivered to our pipeline is increasing rapidly and will continue to increase. The relatively low cost fields, from which gas was purchased years ago, are being rapidly depleted and must be replaced with higher cost gas. In the case of Texas Gas, our greatest potential supply area is under the waters of the Gulf of Mexico. The costs of exploring for and developing and producing this gas are continually increasing and will increase more so as the producer has to go into deeper and deeper waters. Coupled with this, off-shore gathering costs will also increase. Gas today represents approximately 60 percent of our revenue dollar. Therefore, in my opinion, the selling price of our product to the distributor and in turn his selling price to the consumer has

only one way to go—up—not on a temporary, but on a long-term basis.

Today, natural gas has a marked competitive advantage over competing fuels in our service area. This is pointed out in Dr. Keyserling's testimony. On the other hand, the principal competitor, electricity, is not faced with long-term increases in costs to the same degree as the gas industry. I am of the opinion that in not too many years our competitive price advantage will be narrowed to the point where we will be fighting to compete, price-wise, with electricity.

The competitive fuel problem must be considered in the light of what might be considered realistic possibilities in the future. We already know, for example, that there are substitutes which can be, and probably will eventually be, developed for natural gas as we know it today. The two substitutes most widely discussed today are the gasification of coal and the importation of liquefied natural gas. I have studied both of these carefully. I know that both can be done, but I also know that, based upon the present

state of technology, the price will be so high that it will be difficult for us, by mixing either of the two with natural gas, to compete with electric energy. This is not just a theory. I am sure that anyone looking at the long-term potentials of gas requirements and the long-term gas availability studies will agree with my conclusions. So, here again, even though we may feel that we can keep our pipelines full, I am convinced that using one or more of these high cost substitutes will result in severe competitive problems.

If we lose our present price advantage by having to supplement our natural gas supply with gasified coal or imported LNG, no one can deny

that it can have a significant impact upon our growth potential. Therefore, the facts today as to the growth potential of this industry are, in my opinion, substantially different than they were when Alabama-Tennessee was decided.

Q. Does that complete your testimony with respect to the changed circumstances since the issuance of the Commission's decision in the Alabama-Tennessee case? A. No. There is one more point which is of significance.

Q. Will you indicate what this point is? A. On March 25, 1969 the Chairman of the Federal Power Commission, in testimony before the House Ways and Means Committee, recommended, on behalf of all five commissioners, that the privilege of utilizing the provisions of Section 167 of the Internal Revenue Code, relating to liberalized depreciation, should be withdrawn from natural gas pipeline companies and electric companies which are subject to the jurisdiction of the Federal Power Commission. This recommendation was made in complete recognition that the withdrawal of this privilege would require an increase in the rates of these utilities.

Q. What conclusions do you draw from these changed circumstances? A. It is difficult for me, as the chief executive officer of our company, to justify a continued use of liberalized depreciation, under present Commission policy of flow-through, in light of the problems which are facing the industry as to which I have just testified.

In addition, it makes no sense for Texas Gas to continue to use a method of tax depreciation as a basis of reducing the price of our

83

product, at a time when we have a major competitive advantage. Under the Commission's present policy, we would be required to do just this and add a presently known and definitely ascertainable cost burden to future prices when our competitive advantage may have disappeared.

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84

Prepared Testimony of Virgil W. Meythaler
Re Exhibit Nos. 5 and 6

Q. Please state your name and business address. A. My name is Virgil W. Meythaler, and my address is 3800 Frederica Street, Owensboro, Kentucky 42301.

Q. By whom are you employed and in what capacity? A. I am employed by Texas Gas Transmission Corporation as Senior Vice President.

Q. Please outline, briefly, your educational and professional background. A. I was graduated from the University of Illinois in June of 1941 with a Bachelor of Science degree in Accountancy. Immediately upon graduation, I was employed by the accounting firm of Arthur Andersen & Co., and served on their accounting staff until July of 1942. From July of 1942 through 1945, I was on active duty as an officer in the United States Navy, after which time I returned to Arthur Andersen & Co., again being

on their utility staff until August of 1946. At that time, I accepted a position as Chief Accountant with Hart, Carter & Company in Peoria, Illinois. In 1947, I left this position to become Secretary and Treasurer of four small companies engaged in the manufacture, warehousing and sale of farm equipment. In this work, I was located in Rochelle and Monmouth, Illinois, and was responsible for all accounting

and financial matters of the companies. In 1948, I again entered the public accounting field as a Senior Accountant for the firm of Krieger and Stevenson in Peoria, Illinois. I remained with that firm until being employed by Texas Gas in May of 1949. In January, 1953, I was elected Assistant Treasurer and subsequently, have held the offices of Treasurer, Vice President and Treasurer. I have been a Senior Vice President of the company since 1961 and have been a member of the Board of Directors of Texas Gas since 1964. I am also one of four members of the Executive Committee and one of three members of the Finance Committee of the Board of Directors.

Subject to the Chairman of the Board of Directors, who is Chief Executive Officer of the company, I am responsible for all financial and accounting matters affecting the company. It is my responsibility to supervise studies as to the economic feasibility of proposed expansion programs as well as other capital expenditures and to make recommendations to the Board with respect thereto. I am responsible for making a determination of the amount and type of all new capital required by the corporation and its subsidiaries and for making final arrangements with respect thereto. I also maintain liaison with

investment bankers, insurance companies, security analysts and rating agencies in order to keep abreast of the cur-

rent cost of capital and market conditions. In this connection, it is my responsibility to maintain the financial integrity of the corporation as well as investor confidence in the securities of Texas Gas.

I have previously presented evidence, as a witness before the Federal Power Commission, in the following rate proceedings of Texas Gas: Docket Nos. G-2017, G-10751, G-12823 and RP61-15.

Q. What aspect of this proceeding do you propose to cover in your testimony? A. While I have a responsibility for the entire case, I propose to confine my testimony in this proceeding to four main subjects namely (1) rate of return (2) certain aspects of working capital, (3) the tariff changes relating to billing demands and (4) the reversion to straight line method of depreciation for tax purposes.

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178

Q. Mr. Meythaler, I am now going to turn to the subject of tax depreciation. Would you therefore direct your attention to page 1 of Exhibit No. 8 (Statement H(3)) and indicate whether you are familiar with the data shown therein? A. Yes. I am familiar with these data.

Q. Will you state what method of tax depreciation was used in computing the Federal income taxes shown therein? A. In this proceeding, we are requesting permission to discontinue the use of liberalized depreciation and, in lieu thereof, to revert to a straight-line method of computing depreciation for tax purposes. Therefore, the Federal income taxes have been computed upon the assumption that this permission has been granted.

Q. Just what do you mean when you speak of reverting to a straight-line method of depreciation in computing income taxes? A. I mean that the Company proposes to elect to use straight-line depreciation on all new plant additions rather than liberalized depreciation as permitted

under Section 167 of the Internal Revenue Code. In addition, I also mean that the Company will discontinue the use of liberalized depreciation with respect to existing plant and, in lieu thereof, recoup the undepreciated balance of the original cost of such facilities, for tax purposes, on a straight-line basis over the estimated remaining life or lives of such property.

Q. What method does Texas Gas use, on its books, for determining

depreciation? A. We use a straight-line method.

Q. Will the amount of depreciation for tax purposes on existing plant on a reverted straight-line method, as you now propose, be less than the depreciation charged on the books of the Company for such property? A. Yes. This is because, under the double-declining balance method, the Company has utilized a greater amount of depreciation with respect to such property in the earlier years than is the case where a straight-line method is used. The former is the method which we have used in computing depreciation for tax purposes on depreciable transmission, storage, production and certain general plant. The latter is the basis upon which we accrue book depreciation on all of our plant.

Q. Is Texas Gas permitted, under the Internal Revenue Code, to discontinue the use of liberalized depreciation and revert to a straight-line method of depreciation for tax purposes? A. Yes. Under provisions of Section 167 of the Internal Revenue Code, if a company is utilizing the double-declining method of liberalized depreciation, it has the unqualified right to elect, at any time, to change to straight-line depreciation without permission from the Internal Revenue Service.

Q. When did Texas Gas first utilize liberalized depreciation for tax purposes? A. In 1955, the Company first began to utilize the double-declining

180

method of depreciation as provided in Section 167 of the Internal Revenue Code of 1954 on certain of its depreciable plant, installed in 1955 and thereafter, as previously mentioned. On all other depreciable gas plant in service, we continued to use straight-line depreciation for tax purposes.

Q. Has Texaco Gas utilized accelerated amortization under Section 168 of the Internal Revenue Code? A. Yes.

Q. What method of accounting has been used relative to the use of accelerated amortization and liberalized depreciation? A. We use normalized tax accounting applicable to facilities constructed from 1953 to 1967, on which certificates from a defense agency permitted accelerated amortization. Under accelerated amortization, 25% of the cost of such facilities was amortized over a five-year period. The accounting is prescribed in the Uniform System of Accounts. Simply, it is charging "Provision for deferred income taxes, Account 410" and crediting "Accumulated deferred income taxes, Account 281" for an amount equal to that by which taxes payable for the year are lower because of the use of accelerated amortization of certified defense facilities in computing taxes, as compared to the depreciation otherwise appropriate, for tax purposes, on a straight-line method. After that portion of our certified facilities had been completely amortized, no depreciation for tax purposes could be claimed in subsequent years. Our accounting procedure was then reversed

181

so that a charge to the accumulated reserve, Account 281, is made each year and a credit to "income taxes deferred in prior years, Account 411," in an amount equal to that by which taxes on income payable for the years are greater because of the use, in prior years, of accelerated amortization. The Company is presently amortizing this reserve

with an annual charge to Account 281 and a credit to Account 411 in the amount of $306,192 applicable to Federal income taxes.

As to the accounting used relative to liberalized depreciation, beginning in 1955 we followed normalization accounting which is similar to that which I have described in connection with accelerated amortization. It provided for charging "Provision for deferred income taxes, Account 410" and crediting "Accumulated deferred income taxes, Account 282," for the amount by which taxes payable for the year are lower because of the use of liberalized depreciation in computing taxes as compared to depreciation, for tax purposes, on a straight-line method. The prescribed accounting provided that for plant additions by vintage year for each class or group, when the tax depreciation was less than the straight-line depreciation because of having used liberalized depreciation, then the opposite accounting entries would be made charging Account 282 and crediting Account 411 to offset the higher tax payments.

This method of accounting was followed until October 1, 1966, at which time the Company, to comply with newly established

182

policy of the Federal Power Commission, reduced its rates to "flow-through" the benefits of liberalized depreciation to its customers. Simultaneous with the rate reduction, Texas Gas adopted flow-through accounting which had the effect of flowing through, to income, the reduction in taxes attributable to the use of liberalized depreciation in each year rather than deferring this amount and accruing it in Account 283 as was done under normalization accounting.

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183

Q. Are you familiar with the reasons which led Texas Gas to propose, at this time, to revert to a straight-line

method of computing depreciation for tax purposes? A. Yes, I am. We reached this conclusion only after a great deal of study and consideration.

Q. Before discussing the reasons which led to this decision, would you first state, if you know, the reasons why Texas Gas initially decided to utilize liberalized depreciation? A. The Company originally decided to use liberalized depreciation only after the Federal Power Commission had declared that it would permit companies, subject to its jurisdiction, to normalize taxes for both accounting and rate-making purposes. Under this policy, Texas Gas would be receiving, in effect, an interest-free loan from the Government to the extent of the temporary reduction in taxes due to the utilization of liberalized depreciation. Initially, the Commission allowed a full return on facilities which

were financed with such funds. The Commission found that this was necessary in order to effectuate the intent of Congress, in enacting Section 167 of the Internal Revenue Code, to encourage the expansion and modernization of plant by all sectors of the economy, including public utilities. This Commission policy was subsequently affirmed by the courts, in all cases where it was questioned on judicial review.

Thus, the Company could take advantage of the same practices followed by all other industries in being permitted to utilize liberalized depreciation for tax purposes, thereby increasing its cash flow and making further expansion possible with less outside capital. Under this type of regulation, the Company could maintain its same level of rates and revenues as permitted prior to the use of liberalized depreciation and have additional funds as though receiving an interest-free loan from the Government. We recognized, that on any particular vintage plant, depreciation could only be taken to the extent of

100% of plant cost and that it was just a matter of timing as to when tax dollars would be paid. Under these conditions our Company's management decided to use liberalized depreciation on its major long-life depreciable plant additions.

Q. Was this policy subsequently modified? A. Yes, the Commission subsequently modified this policy by reducing the return on facilities constructed with such funds to 1½% but continuing the policy of permitting the normalization

185

of taxes. The Commission found that, even at the reduced rate of return, the companies still had enough profit incentive to continue to utilize liberalized depreciation. This policy was affirmed on judicial review. While we were disappointed, we did agree that there was still an incentive to continue the use of liberalized depreciation.

Q. Was this latter policy ever modified? A. Yes. In the now famous Alabama-Tennessee case 31 FPC 208 (1964), the Commission, in a 3-2 decision completely reversed its prior policy by directing a flow-through, ratewise, of the current reduction in taxes due to the use of liberalized depreciation and, further, that no return would be allowed on the accumulated reserve for deferred taxes (Account 282). This policy was sustained on judicial review and has remained unchanged to the present.

Q. Would Texas Gas have originally elected to utilize liberalized depreciation if the Commission's policy had required "flow-through," as announced in the Alabama-Tennessee case? A. The answer is definitely "no" and I believe that our actions clearly answer this question. Although liberalized depreciation was permitted beginning with the tax year 1953, we did not utilize it until we filed our tax return, in 1956, for the calendar year 1955. Our reason for deferment was that the pipeline industry had

requested a declaratory order relative to the accounting and rate treatment to be accorded the use of

186

liberalized depreciation which was not decided by the Commission until June 30, 1956. The management of Texas Gas was not willing to utilize liberalized depreciation until the Commission had declared its policy pursuant to the declaratory order which had been requested by the industry. Once the Commission had determined to permit normalization and full return upon the facilities installed with the funds generated through the utilization of liberalized depreciation, the management of Texas Gas concluded to use this method for tax depreciation. There is no question, however, that the Company would not have utilized liberalized depreciation if the Commission had, at that time, announced the policy which was subsequently set forth in its Alabama-Tennessee decision.

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187

Q. In your opinion, does the Commission's policy of flowing through the benefits of liberalized depreciation to the customer affect Texas Gas' ability to obtain funds for the expansion of its system to meet the increasing demands of its customers? A. Yes. Obviously, if the reduction in cost of service, attributable to the temporary reduction in taxes, is passed on, rate-wise, to the customer, such funds are not available for the construction of new facilities. This is particularly significant in a time, such as the present, where the cost of borrowed money is at an all time high.

188

Q. Does the Commission's policy with respect to liberalized depreciation affect Texas Gas' ability to sell securities? A. Yes. Texas Gas, in flowing through bene-

fits of liberalized depreciation to its customers, had to reduce its rates, because of the Federal income tax effect, approximately $2 for every $1 of tax benefit. This reduction in revenues had the effect of reducing Texas Gas' "before taxes" coverage of interest and other charges.

Q. When Texas Gas reduced its rates to flow through the benefits of liberalized depreciation, what was the impact upon the coverages of Texas Gas? A. Our "before tax" coverage was reduced approximately 0.61 times and the "after tax" coverage approximately 0.12 times. Naturally, the impact on "after tax" coverage was not as severe as the dollar reduction was only equal at the loss of return and did not include loss of related tax dollars.

Q. What is the significance of the "before taxes" coverage to which you refer? A. For example, the two coverages which are shown in Moody's Public Utility Manual, which are material in determining the quality of a company's debt securities offered to the public, are the "before taxes" coverage and "after taxes" coverage. Of the two coverages, the "before taxes" coverage is the more important.

Q. Would you please explain why, if you know, the "before taxes"

coverage is more important? A. The "before taxes" coverage is the more important because it constitutes the total dollars available for the payment of interest, as interest has a prior claim on such dollars in that it is a deductible expense for tax purposes.

Q. Would the combined use of liberalized depreciation and flow through, affect Texas Gas' ability to sell securities? A. Yes, it would. For example, if we were to continue to use liberalized depreciation over the next three years instead of reverting to a straight-line method in computing taxes, our "before taxes" coverage would drop from the almost "3.5 times," which would be provided

by the proposed rates, to an average of merely "3.18 times." This, of course, would affect the quality of our securities. But, in addition, the reduction in revenues lowers the borrowing capacity of Texas Gas by more than $30,000,000, under coverage requirements in our Indentures.

Q. Is this one of the reasons which led Texas Gas to seek permission to return to a straight-line method of computing tax depreciation? A. Yes, it is.

Q. Are there any others? A. Yes. There are many, and they are all important.

Q. Will you please explain the other reasons. A. Of prime concern to Management in utilizing liberalized depreciation on a flow-through basis is the increasing taxes each

year without comparable increasing revenues unless major capital additions are made. No businessman today welcomes a built-in increase in costs. There are enough rising costs creating pressure on profit margins to cause grave concern without adding another when it could be avoided. For example, based on the gas plant in service used for the test period in these proceedings, the tax depreciation will decline from 1970 to 1971 over $1,100,000. Just to keep the same dollar differential between tax depreciation and book depreciation will require plant additions of almost $33 million. However, assuming that plant additions of $33 million would generate the same sales volume per dollar of investment as existing gross plant dollars provide, revenues from rates designed to flow through liberalized depreciation, computed today, would not be sufficient to recover the increased taxes as such rates would have been designed on a higher ratio of tax depreciation to book depreciation than would exist with only plant additions in the amount of $33 million. In order to maintain the same relationship which exists

today between tax depreciation and book depreciation, so that future revenues would recoup future tax costs, an expansion of approximately $41 million would be required. Even with this plant addition, Management cannot assume that additional revenues will be sufficient to keep pace with the increased tax component as the sales volumes being generated by existing plant cannot be generated

191

proportionately with new capital expenditures due to the continual rise in construction costs. Therefore, the safest way to assure stability of tax expenses in relation to unit revenues is to revert to remaining straight-line depreciation method on existing plant and to utilize straight-line depreciation on new facilities which are installed in the future.

Q. Do you mean to imply that there will be no future growth in plant for Texas Gas? A. No, I am sure that Texas Gas will add to its utility plant, from time to time, in the future. However, the picture, today, concerning future growth potential, is not as rosy as that envisioned by the Commission at the time of its Alabama-Tennessee decision. The present uncertainty with respect to future long-term supplies of natural gas, if not alleviated, could materially alter our growth potential. It would also narrow our competitive advantage with other fuels. These points will be covered, in more detail, by Mr. Elmer, the Chairman of the Board of Directors of Texas Gas and its chief executive officer.

Q. Do you have any further reasons for reverting to a straight-line method of computing tax depreciation? A. Yes. In March of this year the Ways & Means Committee of the United States House of Representatives invited the Federal Power Commission to appear and present testimony on the subject of liberalized depreciation. The Commission, on March 25, 1969,

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through its then Chairman, Mr. White, unanimously recommended that the privilege of utilizing liberalized depreciation should be withdrawn from companies which are subject to the Commission's jurisdiction.

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Q. Did these statements of Chairman White play an important part in the Company's decision? A. It wasn't a motivating factor. But it was certainly an important consideration in the decision of the Board of Directors to revert to a straight-line method of tax depreciation.

Q. Did the decision of the Board take the form of a resolution? A. Yes. The Board unanimously passed a resolution with respect to this matter on May 14, 1969.

Q. Do you have a certified copy of that resolution? A. Yes.

Q. Would you please read the resolution into the record. A. Yes.

"WHEREAS, due to the many disadvantages to the Corporation of continuing to utilize liberalized depreciation provisions of Section 167 of the Internal Revenue Code in computing depreciation, for tax purposes, in light of the Federal Power Commission's (FPC's) policy of depriving the Corporation of all of the benefits thereof; and

WHEREAS, the officers of the Corporation have been authorized, heretofore, to file for an increase in the Corporation's rates for the transportation and sale of natural gas which are subject to the jurisdiction of the FPC; and

194

WHEREAS, it is understood that the aforesaid increased rates are based, in part, upon an assumed reversion to a straight-line method of computing depreciation, for

income tax purposes, under Section 167 of the Internal Revenue Code;

Now, Therefore, Be It

Resolved, that the officers of the Corporation be, and they are, hereby directed, once final FPC approval has been received in the form of increased rates, to take the necessary steps to revert to a straight-line method of computing depreciation for tax purposes on properties of the Corporation which are subject to the jurisdiction of the aforesaid Commission for the period as to which the said increased rates apply."

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501

Testimony of William J. Powell

Q. Would you please state your name, address, and employer. A. My name is William Joseph Powell. I reside at 6905 Heidelburg Road, Lanham, Maryland. I am employed by the Federal Power Commission in Washington, D. C.

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Q. Briefly, what are your duties as Chief of the Division of Systems? A. As Chief of the Division of Systems I am

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responsible for development and design of the Uniform Systems of Accounts and revisions thereto, accounting report forms, accounting regulations, the preparation of accounting interpretations, and financial studies and research related to the Commission's financial responsibilities. I am also responsible for development of record retention requirements and surveillance of financial reports, accounting aspects of certificate applications, journal entries, pro-

spectus applications, and other accounting and related financial matters.

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Q. Are you familiar with the testimony of Mr. Virgil W. Meythaler and the reasons that he gives as to why Texas Gas Transmission Corporation is requesting permission to discontinue the use of liberalized depreciation and to use a straight-line method of computing depreciation for tax purposes? A. Yes. I have read Mr. Meythaler's testimony.

Q. In your opinion do you believe that the reasons given by Mr. Meythaler justify the discontinuance of liberalized tax depreciation?

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A. No. I do not agree that the reasons are sufficient to justify the reversion from liberalized tax depreciation to straight-line depreciation by Texas Gas Transmission Corporation.

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Although the Commission has held both in the Alabama-Tennessee case, Opinion No. 417, 31 FPC 208, and Midwestern Gas Transmission Company that "flow-through" is a proper method whenever a company is in a growing or stable plant situation, it is my opinion that a company should take advantage of the liberalized tax depreciation method allowed by the Internal Revenue Code of 1954 even though their plant should be in a declining situation. To illustrate this fact, I have prepared Exhibit 21 (WJP-3) which shows that under a declining plant situation, that is, where there are no additions to plant, that there will never be any increases in the overall

511

taxes paid when a company uses liberalized tax depreciation.

Q. Will you please explain the considerations underlying your Exhibit 21 (WJP-2). A. Exhibit 21 (WJP-2) illustrates the overall tax reductions related to the use of liberalized tax depreciation and the effect that a declining rate base has on taxes related to the return computed on the net book investment. Column 5 of the Exhibit shows the annual tax effect because of the use of liberalized tax depreciation. In the earlier years there would be tax benefits which would be offset in the later years by increases in taxes. Column 9 illustrates the reduction in taxes occasioned by the diminishing rate base. The diminishing amount of return is due to the declining net book investment which is the basis for determining the amount of the return. As illustrated by Column 9, there is a continuous decline in taxes paid which is accelerated in the earlier years from the use of liberalized

512

tax depreciation but is not appreciably affected in later years as the tax base declines. This effect is illustrated in Column 10.

Q. Is it your testimony, then, that the request of Texas Gas Transmission Corporation be denied? A. Yes. The arguments presented by Mr. Meythaler are not new and were considered at the time of Alabama-Tennessee and in the Midwestern case.

It is my opinion that sufficient justification relating to plant growth and increases in taxes has not been introduced in this case that would warrant Texas Gas' proposal to switch to straight-line tax depreciation.

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568

Prepared Direct Testimony of Melwood W. Van Scoyoc

Q. Please state your name. A. Melwood W. Van Scoyoc
Q. Where do you reside? A. Washington, D. C.
Q. What is your business? A. I am President of the firm of Van Scoyoc & Wiskup, Inc., Public Utility Consultants with offices at 1735 K Street, Northwest, Washington, D. C.

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Q. Do you agree with Mr. Meythaler's testimony at page 189, commencing at line 2, that the "Before Tax" coverage is more important than the

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"After Tax" coverage? A. No, I do not.
Q. Why not? A. Because the real earnings available for the payment of interest to bond and debenture holders can only be such earnings as are available after payment of income taxes. It is true that interest is tax deductible however, income tax is a prior lien on the earnings of the corporation. If the corporation pays no income tax the ratios are, of course, identical. I am not convinced that the indicated margin of protection of bondholders against declines in earnings and impairment in the quality of their security can be better measured by the "Before Tax" income rather than "After Tax" income.

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Rebuttal Testimony of V. W. Meythaler

Q. Are you the same Mr. V. W. Meythaler who has already testified in this proceeding? A. Yes.

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Q. Are you familiar with the testimony of Mr. William J. Powell in this proceeding? A. Yes, I have read Mr. Powell's testimony.

Q. On page 10 of his testimony, Mr. Powell states:

"... it is reasonable to assume that Texas Gas will be in a growth situation in the foreseeable future and as experienced over the last 12 years that growth should approximate 7 percent per year."

He supports this conclusion with a statement, also on page 10, that it is reasonable "since there is no indication in the company's testimony to the contrary ..." Do you agree with these statements? A. No, I do not. His estimate is obviously based upon his testimony on page 9 where he says that the average growth rate of Texas Gas for 1957 through 1969 was 7.2%.

Q. Is it your position that Texas Gas will not be in a growth position in the foreseeable future? A. No. In my prior testimony at page 108 (TR. 191), I stated that I was sure that Texas Gas would add to its utility plant, from time to time, in the future. But, I also added:

"However, the picture today, concerning future growth potential, is not as rosy as that envisioned by the Commission at the time of its Alabama-Tennessee decision. The present uncertainty with respect to future long-term supplies of natural gas, if not alleviated, could materially alter our growth potential. It would also narrow our competitive advantage with other fuels."

In addition, Mr. Elmer, at pages 5 through 8 of his testimony, covered the problem of gas shortage and growth potential.

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I would now have to supplement this by adding another limiting factor; namely, the current tight money market.

But, even before these unfavorable conditions appeared, Texas Gas' growth has not been on a consistent basis. Mr. Powell's Exhibit No. 20 (WJP-1) discloses this. You will note, in column 5 of his exhibit, the irregularity of additions from a low of 1.27% in 1957 to a high of 21.25% in 1959, and that 9 out of the 13 years reflected show a growth of less than the average. Using Mr. Powell's 7.27% growth rate, we would have over a billion dollars of plant by 1980 and over two billion dollars by 1989. It is apparent, therefore, that the projection of such a rate of growth for Texas Gas is totally unrealistic.

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Q. At pages 10 and 11 of his testimony, Mr. Powell states

". . . where there are no additions to plant, that there will never be any increases in the overall taxes paid when a company uses liberalized tax depreciation."

Do you agree with that statement? A. No, I do not.

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Q. Will you please explain the reasons for your disagreement? A. Mr. Powell's Exhibit No. 21 (WJP-2) was prepared, according to his testimony, to support the conclusions which you have just quoted. However, his exhibit has many deficiencies. As he has already indicated, per his letter of November 28, 1969, he should have used 92.308% in computing the figures shown in column 5, rather than the 48%. In addition, the tax reductions reflected in column 9 are on a cumulative basis and not on a yearly basis. However, Mr. Powell, in order to get column 10, adds the cumulative reductions in column 9 to the annual reductions in column 5. Therefore, what column 10 reflects is anybody's guess. I don't know what you get when you add something which is computed on an annual basis to something which is set forth on a cumulative basis.

Q. Are there any other defects? A. Yes. Mr. Powell's exhibit necessarily assumes that the company is capitalized on the basis of 100% equity. This is so in view of the fact that he does not reflect the loss of interest as a tax deduction through the amortization of debt. However, in dealing with natural gas pipelines, it is totally unrealistic to assume a company with 100% equity. It is also unrealistic to use such a capital structure to illustrate the effect of continued use of liberalized depreciation by Texas Gas. As Exhibit No. 6 (Statement F(1)1) shows, Texas Gas' debt comprises approximately

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60% of its total capital structure.

Q. Have you prepared an exhibit which would more accurately reflect the information which Mr. Powell purports to show? A. Yes, I have.

Q. Is Exhibit No. 32 (VM-7) such an exhibit? A. Yes, it is.

Q. Was that exhibit prepared by you or under your direction or supervision? A. It was.

Q. Will you please explain what Exhibit No. 32 (VM-7) purports to show? A. Page 1 of Exhibit No. 32 (VM-7) is a comparison of total Federal income taxes on the bases of straight-line and double-declining balance depreciation, assuming 100% equity financing. Hereafter, I will sometimes refer to this latter method of depreciation as "DDB." Column 1 of page 1 represents net book investment or rate base which is the same as column 7 of Exhibit No. 21 (WJP-2). Column 2 represents return at 8% and column 3 represents Federal income taxes using straight-line depreciation and assuming a 48% tax rate. Column 4 represents the excess of DDB depreciation over straight-line depreciation which is the same as column 4 of Exhibit No. 21 (WJP-2).

Column 5 represents Federal income taxes using DDB depreciation assuming a tax rate of 48%.

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Column 3, which illustrates Federal income taxes using straight-line depreciation, shows a *decrease* in taxes each year after the first full year. On the other hand, column 5 shows an *increase* in taxes each year through year 10, then a decline begins which continues until the end of the period. The taxes will increase using DDB depreciation because such depreciation declines in amount each year until the year of reversion to straight line on remaining life. Page 2 sets forth the same basic information as page 1, except that page 2 assumes a 60% debt financing and a 20-year sinking fund, whereas page 1 was based upon an assumed capitalization of 100% equity per Mr. Powell's exhibit. Columns 1 and 2 are identical with columns 1 and 2 of page 1. Column 3 represents the interest computed on an assumed $60,000 debt with sinking funds of $3,000 annually and an interest rate of 6½% per annum. Column 4 represents Federal income taxes using straight-line depreciation at an assumed tax rate of 48%. Column 5 represents the excess of DDB over straight-line depreciation and is identical with column 4 of page 1. Column 6 represents Federal income taxes using DDB depreciation and an assumed tax rate of 48%.

You will note in column 3 on page 1 and in column 4 on page 2 that taxes under straight-line depreciation continue to decline each year for the life of the property. In contrast, it can be seen in column 5 on page 1 and in column 6 on page 2 that taxes under DDB depreciation increase beginning with the first full

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year. When debt financing and related sinking funds are considered, as reflected on page 2, the taxes will increase over a longer period of time.

Q. What conclusions, if any, have you reached as a result of the data reflected in Exhibit No. 32 (VM-7)? A.

Using the same basic assumptions as Mr. Powell, it is apparent that taxes will increase annually for a period of years well beyond the foreseeable future as a result of the continued use of liberalized depreciation contrary to Mr. Powell's flat statement that they would not.

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Q. At pages 15 and 16 of his testimony, Mr. Raymond says that he disagrees with your testimony at transcript 187 wherein you seem to infer, according to him, that in reverting to a straight-line method of computing tax depreciation, you will have additional funds available for new plant construction. Is this a fair interpretation of your testimony?

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A. No, it is not. The testimony to which Mr. Raymond is referring appears in the following question and answer:

"Q. In your opinion, does the Commission's policy of flowing through the benefits of liberalized depreciation to the customer affect Texas Gas' ability to obtain funds for the expansion of its system to meet the increasing demands of its customers?

"A. Yes. Obviously, if the reduction in cost of service, attributable to the temporary reduction in taxes, is passed on, rate-wise, to the customer, such funds are not available for the construction of new facilities. This is particularly significant in a time, such as the present, where the cost of borrowed money is at an all time high."

It is perfectly apparent that I am not contending that a reversion to straight-line, in and of itself, will provide additional funds for construction. I am there stating my opinion that I believe the Commission's policy, with respect to flow through, is totally inappropriate at a time such as the present where the cost of borrowed money is

at an all time high. I most certainly know that, under a flow-through policy of the benefits of liberalized depreciation, there are no funds available for the construction of new facilities from the difference between actual taxes paid and normalized taxes. Only if liberalized depreciation is taken and normalization accounting and rate policies are followed are there actual funds available to the company. I did not say that funds were available in using reverted straight-line depreciation, in fact additional funds will be needed for taxes.

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Q. Was Exhibit No. 33 (VM-8) prepared by you or under your direction or supervision? A. Yes, it was.

Q. Will you please explain that exhibit? A. The purpose of this exhibit is to show the greater ability of Texas Gas to absorb increasing costs, during these inflationary times, under a straight-line tax depreciation method than under DDB with flow-through.

Under straight-line depreciation, there would be greater stability of rates for the customers and more assurance that the company could earn its fair rate of return without an increase in rates. Column 1 of my exhibit sets forth the reductions in total revenue requirements for the five years 1970 through 1974 resulting from the decline in return and Federal income tax requirements on the basis of reverted straight-line tax depreciation.

As noted in footnote 1, the return requirements were computed by maintaining a constant return on common equity and recovering annual capital costs on all other securities. This in effect resulted in the return declining through the operation of sinking funds on both the existing long-term debt projected at December 31, 1969, and annual sinking funds of $3,925,000 on the proposed $78,500,000 of new debt estimated to cost 9.7%. The annual sinking fund require-

ments for debt and preferred capital approximates the annual depreciation claimed by the company in these proceedings.

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In column 3 I have set forth comparable information on the basis of continuing the use of liberalized depreciation on eligible plant. All other assumptions relative to return were identical with the computations in column 1. As you will note, on the straight-line tax depreciation method shown in column 1, the company has the ability to absorb more than $1 million of increased costs in each of the years from 1970 through 1974 or a total of $5,304,000. On the other hand, in column 3 under liberalized depreciation, the ability to absorb costs ranges from $193,000 to $558,000, or a total of $1,875,000 for the 5 years. In order to appraise the significance of this, I have set forth, in column 2, the amounts that would be required for a 7% compound annual increase in salaries and wages for Texas Gas. A 7% compound annual increase in labor costs is consistent with the pattern of union settlements in the first half of 1969. The ability to absorb costs under the liberalized method would be materially lower but for the fact that during the years 1955 through October, 1966, the company, under normalization, had created a reserve for deferred taxes which is now being used as an offset against the increased taxes associated with the company's use of liberalized depreciation on early vintage plant. Of course, as time goes on under flow-through, the amount of deferred taxes available to offset these increased future taxes will be smaller and smaller since no reserves are provided under such a policy. Therefore, the reduction due to decline in return and Federal income taxes in column 3 would be smaller.

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W. M. Elmer

was called as a witness and, having been first duly sworn, was examined and testified as follows:

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Cross-Examination

By Mr. Goldberg:

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Q. And assume further that you were actually endowed with sufficient funds to be able to propose to construct for 400 million a day. Would you come into the Federal Power Commission with an application to build a project involving 400 million a day although for that heating season your need was only 200 million a day? A. Let me try and answer the question this way, and let's try to get on a more realistic instead of a dreaming basis. And I am not saying that in a critical way. But the money is tight. To finance what we have got to pay off right now for what we have spent is going to create great problems. To borrow what—if we go ahead with an expansion program, to borrow it is going to be real tight. So we are going to have to limit our borrowing because of coverage, because of everything else, to a minimal amount.

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If we can ever get over the valley as they are talking about up on the Hill now that is going to happen after all these inflation problems are whipped and so forth, and get back to normal, the kind of an operation that we were in five or six years ago, when we have the coverage, when we have the borrowing ability, when we have the earning ability, I think we will do everything possible to put some

excess capacity into this pipeline. But we won't definitely do it next year.

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Virgil W. Meythaler

was recalled to the witness stand, and having been previously, duly sworn, was examined and testified further as follows:

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Cross-Examination

By Mr. Morrow:

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Q. You testified at lines sixteen and seventeen that you were not contending that an increase in cost ten years down the road is the reason for increasing your rates at this time. Do I understand you to be saying by that that you are not relying on the computations concerning a $4,800,000 increase in costs in 1979 as a basis for going to straight line depreciation now? A. My answer that I gave that got into this problem was that I would want to revert, or utilize, rather than revert—elect to use straight line depreciation on subsequent additions to avoid this problem. Now, naturally, going back to straight

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line at this time would accomodate this problem and alleviate the situation, prolong the day of reckoning, so to speak.

Q. But you are not suggesting that it would be good policy for Texas Gas to incur a five-million-dollar increase in the cost of service in 1970 just to avoid a $4,800,000 tax

increase in 1979, are you? A. I didn't say that. I have other reasons for wanting to go back, yes.

Q. And so your reasons do not include—well, you say you did not say that. A. That's correct.

Q. So we are in agreement there, is that right? A. That's correct.

Q. All right. Thank you. That shortens your cross-examination a good deal.

In your rebuttal testimony on page fifty-nine, 647 of the record, you are there discussing the consequences of a reversion to straight line and the fact that it will not provide additional funds for construction.

Down about line nineteen you state "Only if liberalized depreciation is taken and normalization accounting and rate policies are followed are there actual funds available to the company. I did not say that funds were available in using reverted straight line depreciation. In fact, additional funds will be needed for taxes."

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Are we agreed, then, that if you revert to straight line depreciation there will be additional funds, more funds required for taxes of Texas Gas than if you stay on your accelerated depreciation program that you have been on? A. Yes, same thing as when we flowed through in the first instance, we reversed it, we reduced.

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Q. Would you turn to page 107 of your direct testimony, which is page 190 of the transcript. On that page you seem to be telling us that in order for you to stay even, if you retain the accelerated depreciation program, that you must expand your plant by approximately $41 million next year. Do I read you correctly? A. If the $41 million worth of plant will provide the same capacity, same revenues per dollar of investment as the net investment plant

does, that is correct, because, as you see, when we set a rate based on a tax computation of a certain relationship between book depreciation and tax depreciation, unless you maintain that same relationship that next new rate will not be sufficient to recover the costs applicable to that particular problem.

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Q. But now we are talking— A. However.

Q. Excuse me. Go ahead. A. You know and I know that we cannot put plant in service today at the cost of existing net plant which was constructed with dollars back to 1929 forward. We know what has happened to cost index. It is about 30 percent depreciated. So that isn't possible.

Now, what I tried to make clear here in my rebuttal is that we have to look at this problem from a businessman's standpoint of how do you control costs, how can you maintain stability of rates.

For example, if I could go out and sign a labor contract tomorrow at 50 percent more than they are getting today and no more increases, I would recommend it. Here is a chance that we are not penalizing the customer, we are merely trying to go back to where we were in 1966. This is one more thing that has agravated this whole situation of deterioration of income dollars, as Mr. Keyserling testified. And we are now at the end of the rope. We are trying to re-establish where we were in 1966 before all this thing came about.

Now, I think when Congress gets through we won't have to worry about this, but—

Q. I recognize we may be participating in an exercise in futility if the law changes. But by returning to 1966, what

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you simply mean is going back to the straight-line method of depreciation? A. No, I would say we ought to be back to normalization and taking liberalized depreciation, and

then we would have a little more chance of stability of rates.

Q. Yes, because then in that case you would be then taking more tax dollars from your customers than you had to pay to the Government, wouldn't you? A. Oh, absolutely. We did not pay the taxes, no. They were deferred taxes, right. And we would have the use of them, correct. And that would give us an ability to maintain more of a semblance of stability of rates than we are faced with today under this practice.

Q. Then when you talk about going back to where you were in 1966, you are not talking about going to straight-line depreciation but to accelerated depreciation normalized; is that what you mean? A. In this particular case I am offering to go back to straight-line—revert to straight-line on the remaining—excuse me, on all existing plant. If I were to change this and go back to normalization, it would be higher than what I filed for because I have got to recoup what I gave you since 1966.

Q. Well, I thought you said you just wanted to go back to 1966?

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A. I want to be in the same position that I was in 1966.

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Q. Are you really telling us that Texas Gas cannot count on growth? A. I am saying we cannot count on steady growth. I don't even know whether there is going to be any growth. I have never made that contention. I know I am going to have to add plant just to maintain gas supply.

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Q. Right. And, therefore, you are going to have to grow, aren't you? A. And file a rate increase, yes.

Q. All right. And you are going to have to grow, aren't you? A. And I am trying to avoid that by what I am attempting to do here.

Q. If you do not grow, then your return requirement diminishes as your depreciation reduces your rate base, doesn't it? A. My return requirements would decline as I pay off my debt, yes.

Q. And retire property from your rate base? A. Well, if we would retire property, you are in trouble.

Q. But if you do, if your rate base—if you don't grow, then your requirements for return decrease, don't they? A. Not necessarily. I mean you are assuming that I never add anything. If I never add any plant, your statement would be correct, yes. But that doesn't follow that I would be making too much money even in your views for the next succeeding years.

Q. What I am trying to establish is to get into the real world with you, and in the real world you know Texas Gas' plant is going to continue to grow, isn't it?

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A. I never said that it wasn't.

Q. All right. A. I said it was not going to grow steady.

Q. And furthermore, you know that since it costs more dollars to put in the same amount of plant each year, that if you grow at anything like the rate that you have experienced in the past, it is going to cost you more dollars than it has in the past just to keep the same rate of physical growth, don't you? A. And it is going to cost the customers even more so.

Q. But it is going to cost Texas Gas more, and that means you are going to get greater and greater investments in plant, isn't that right? A. You are wasting your time, Mr. Morrow.

Q. All right.

Thank you. I appreciate the advice. A. I told you

that we would be adding plant. I expect to add plant. What growth is going to be, that is another thing.

Q. You mean how much? A. How much, if any.

Q. Now, are you telling me that you are predicting that perhaps Texas Gas will not grow, its plant won't grow? A. I am almost confident that there will be years when there will be no growth. If we are not able to come up with the adequate gas supply—

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Q. But I mean over the whole— A. —there would be a good chance that there wouldn't be.

Q. I am not talking about one particular year. I mean over the long haul you expect Texas Gas to continue to grow, don't you? A. I hope so.

Q. And you expect it, don't you? A. To some degree.

Q. All right.

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Q. Did you base your opinion on the importance of before tax coverage on the fact that interest has a prior claim to dollars of revenue prior to—the claim of interest is prior to the claim of Federal income taxes? A. Yes, sir.

Q. And what is your authority for the proposition that

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interest enjoys a higher priority over revenues than Federal income taxes? A. Well, if I had a million dollars of income before interest deductions and now I have a million dollars of interest, there wouldn't be any taxable income, and therefore there would be no taxes. So how can you say that the taxes have a prior claim against income dollars?

Q. If you had a million dollars of income and a million dollars of interest, the before-tax coverage would be iden-

tical, wouldn't it? A. I wouldn't be in business under that assumption, but made it two million if you wish. If it is two million dollars and the interest is a million, Mr. Morrow—

Q. I am using— A. —I have twice as much protection before taxes as I have after taxes. Now, wouldn't you rather be an investor with two million dollars available to pay your one million dollars interest? I mean wouldn't you look at it that way rather than look at it with just the million?

Q. I appreciate the lecture, but I would like an answer to my question.

Mr. Boland: He is answering your question.

By Mr. Morrow:

Q. What is your authority for the statement that the interest has a prior claim to revenues over Federal income

taxes?

Presiding Examiner: Oh, he has explained what he means, Mr. Morrow.

The Witness: The taxes—

Presiding Examiner: Just a minute. If they don't pay interest—they don't have any taxes if they can't pay their interest, that is all he is saying. As a legal matter we all know that the income tax has a prior lien against the assets of the company over interest due to bondholders. But you certainly got to pay the interest before you pay taxes, don't you?

By Mr. Morrow:

Q. Would you agree with that statement of the Examiner, Mr. Meythaler? A. It has a prior lien on assets? You wouldn't have any prior lien, Mr. Morrow, unless you had some taxable income after interest—

Presiding Examiner: That's right.

The Witness: —at some period of time.

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Presiding Examiner: The witness' only point is if your interest uses up your income you have no tax. Isn't that—

Mr. Boland: That's right.

Presiding Examiner: It is as simple as that, isn't it, Mr. Meythaler?

The Witness: Yes, sir. It is just a matter of what would you look at from an investor standpoint for protection or ability to pay the interest obligation. And the more dollars you have, the better off you are. And you know that you come in ahead of Uncle Sam, because interest is a deduction.

By Mr. Morrow:

Q. All right. Now that is the problem. The Examiner stated the law as I understand it, and that is that as a holder of indentures, you don't come in ahead of Uncle Sam.

Presiding Examiner: Well, but if you don't have net income you don't have taxes. That is all there is to it.

Mr. Morrow: All right. And if you don't have net income

1017

and you don't have taxes, then there is no difference between the before-tax coverage and the after-tax coverage, is there, Mr. Meythaler?

The Witness: There certainly is a difference between the before tax and after-tax coverage.

By Mr. Morrow:

Q. Even without any income taxes? A. If there are no income taxes, the dollars would be the same, right.

Q. There would be no difference. Right. A. Right.

Q. All right. Now what— A. I never said there wasn't.

Q. Now, what is the purpose of having coverage? Why is the coverage requirement so important to an investor or to a rating agency? A. Well, it is a matter of quality, assurance that you will receive your income due, you will receive repayment of your investment.

Q. All right. A. Now, the greater number of dollars ahead of it the more protection you have.

Q. Right. A. It is very simple.

Q. Coverage is a cushion, isn't it?

1018

A. Yes. And I don't think it is that difficult, because talk to the rating agencies and ask them which is the more important. Or ask an investor. It isn't that complicated.

Q. As your cushion decreases down to 1.0, where you have just exactly enough taxes to pay your interest, which is—I mean excuse me, just enough income to pay your interest, which is the critical point for your investor, at that point your before-tax coverage and your after-tax coverage are identical, aren't they? A. That is true. But your rating would be such that you wouldn't be selling anything anyway.

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1214

Hearing Exhibit No. 20

Exhibit 20 (WJP-1)

TEXAS GAS TRANSMISSION CORPORATION ANALYSIS OF GROWTH OF GAS UTILITY PLANT IN SERVICE FOR THE YEARS 1957 THROUGH 1969

Year (1)	Gas Plant in Service Beginning of Year (2)[1]	Gas Plant in Service End of Year (3)[1]	Net Additions (Col. 3—Col. 2) (4)	Growth Percentage Based on Net Addition Col. 4 ÷ Col. 2 (5)
1957	$210,273,723	$212,947,314	$ 2,673,591	1.27%
1958	212,947,314	218,436,891	5,489,577	2.58
1959	218,436,891	264,859,343	46,422,452	21.25
1960	264,859,343	281,476,913	16,617,570	6.27
1961	281,476,913	299,877,656	18,400,743	6.54
1962	299,877,656	333,635,543	33,757,887	11.26
1963	333,635,543	347,997,643	14,362,100	4.30
1964	347,997,643	364,384,129	16,386,486	4.71
1965	364,384,129	370,785,666	6,401,537	1.76
1966	370,785,666	400,140,243	29,354,577	7.92
1967	400,140,243	425,383,325	25,243,082	6.31
1968	425,383,325	456,017,721	30,634,396	7.20
	Average Growth Rate 1957-1968			6.78%
1969	456,017,721	515,735,6792	59,717,958	13.10%
	Average Growth Rate 1957-1969			7.27%

[1] Amounts for years 1957 through 1967 from FPC Statistics of Interstate Natural Gas Pipeline Companies; 1968 amounts from Texas Gas' FPC Form No. 2 Annual Report. Estimate for 1969 from Statement C, RP69-41.

[2] Total plant from Statement C, RP69-41, less amounts in Accounts 117 and 105 ($527,630,995—($11,002,674 + 892,642)).

ANALYSIS OF THE EFFECT ON TAXES RESULTING FROM THE USE OF LIBERALIZED TAX DEPRECIATION ON A FLOW THROUGH BASIS COMBINED WITH THE REDUCTION IN TAXES BECAUSE OF A DECLINING NET INVESTMENT IN PLANT[1]

Line No.	Gross Plant (1)	Double Declining Tax Depreciation @ 7.018% (2)	Straight Line Depreciation @ 3.509% (3)	Excess of Double Declining Over Straight Line Depreciation Col. 2—Col. 3 (4)	Annual Tax Effect From Use of Liberalized Depreciation Col. 4 x 92.308% (5)	Accumulated Straight Line Depreciation Beginning of Year Col. 3 (6)	Net Book Investment Beginning of Year Col. 1—Col. 6 (7)	Return Reduction Due to Reduction in Net Book Investment Col. 6 x 8% (8)	Tax Reduction Because of Return Reduction Col. 8 x 92.308% (9)[2]	Total Tax Reduction Col. 9 ± Col. 5 (10)
1	$100,000	$3,509	$1,755	$1,754	$1,619	$....	$100,000	$....	$....	$1,619
2	100,000	6,772	3,509	3,263	3,012	1,755	98,245	140	129	3,141
3	100,000	6,297	3,509	2,788	2,574	5,264	94,736	421	389	2,963
4	100,000	5,855	3,509	2,346	2,166	8,773	91,227	702	648	2,814
5	100,000	5,444	3,509	1,935	1,786	12,282	87,718	983	907	2,693
6	100,000	5,062	3,509	1,553	1,434	15,791	84,209	1,263	1,166	2,600
7	100,000	4,707	3,509	1,198	1,106	19,300	80,700	1,544	1,425	2,531
8	100,000	4,377	3,509	868	801	22,809	77,191	1,825	1,685	2,486
9	100,000	4,070	3,509	561	518	26,318	73,682	2,105	1,943	2,461
10	100,000	3,784	3,509	275	254	29,827	70,173	2,386	2,202	2,456
11	100,000	3,518	3,509	9	8	33,336	66,664	2,667	2,462	2,470
12	100,000	3,271	3,509	(238)	(220)	36,845	63,155	2,948	2,721	2,501
13	100,000	3,041	3,509	(468)	(432)	40,354	59,646	3,228	2,980	2,548
14	100,000	2,828	3,509	(681)	(629)	43,863	56,137	3,509	3,239	2,610
15	100,000	2,630	3,509	(879)	(811)	47,372	52,628	3,790	3,496	2,687
16	100,000	2,488	3,509	(1,021)	(942)	50,881	49,119	4,070	3,757	2,815
17	100,000	2,488	3,509	(1,021)	(942)	54,390	45,610	4,351	4,016	3,074
18	100,000	2,488	3,509	(1,021)	(942)	57,899	42,101	4,632	4,276	3,334
19	100,000	2,488	3,509	(1,021)	(942)	61,408	38,592	4,913	4,535	3,593
20	100,000	2,488	3,509	(1,021)	(942)	64,917	35,083	5,193	4,794	3,852
21	100,000	2,488	3,509	(1,021)	(942)	68,426	31,574	5,474	5,053	4,111
22	100,000	2,488	3,509	(1,021)	(942)	71,935	28,065	5,755	5,312	4,370
23	100,000	2,488	3,509	(1,021)	(942)	75,444	24,556	6,036	5,572	4,630
24	100,000	2,488	3,509	(1,021)	(942)	78,953	21,047	6,317	5,831	4,889
25	100,000	2,488	3,509	(1,021)	(942)	82,462	17,538	6,597	6,090	5,148
26	100,000	2,488	3,509	(1,021)	(942)	85,971	14,029	6,878	6,349	5,407
27	100,000	2,488	3,509	(1,021)	(942)	89,480	10,520	7,158	6,607	5,665
28	100,000	2,488	3,509	(1,021)	(942)	92,989	7,011	7,439	6,867	5,925
29	100,000	2,491	3,502	(1,011)	(933)	96,498	3,502	7,720	7,126	6,193

(1215)

43

1216

Hearing Exhibit No. 22

FEDERAL POWER COMMISSION
BUREAU OF NATURAL GAS

PROPOSED CHANGE TO STRAIGHT LINE DEPRECIATION FOR TAX PURPOSES

Docket No. RP69-41

Texas Gas Transmission Corporation
Washington, D. C.

November 1969

1217

TEXAS GAS TRANSMISSION CORPORATION

PROPOSED CHANGE TO STRAIGHT LINE DEPRECIATION FOR TAX PURPOSES

Docket No. RP69-41

Table of Contents

Description	Schedule
Return and Federal and State Income Tax on Pre-1955 Transmission Plant for the Years 1969-1979	JR No. 1
Computation of Return at 7⅝% on Pre-1955 Transmission Plant for the Years 1969-1979	JR No. 2
Annual Increase in Accumulated Provision for Depreciation of Pre-1955 Transmission Plant for the Years 1955-1968	JR No. 3
Computation of Federal and State Income Tax Allowance on Pre-1955 Transmission Plant for the Years 1969-1979	JR No. 4
Net Provision for Deferred Taxes on Liberalized Depreciation and Plant Additions for the Years 1955-1968	JR No. 5
Tax Depreciation Claimed on Property Subject to the Double Declining Balance Method of Depreciation for the Years 1955-1968	JR No. 6

Hearing Exhibit No. 32

Docket No. RP69-41
Exhibit No. 32 (VM-7)
Page 1 of 2

TEXAS GAS TRANSMISSION CORPORATION

Comparison of Total Federal Income Taxes Under Straight-Line or DDB Depreciation Assuming 100% Equity Financing

Year	Net Book Investment Per Col. 7 of Ex. (WJP-2) Rate Base	Hearing @ 8% Col. 1 × 8%	Federal Income Taxes Under Straight-Line Depreciation Col. 2 92.308% [1]	Excess of DDB Over Straight-Line Depreciation Per Col. 4 of Ex. (WJP-2)	Federal Income Under DDB Depreciation Col. 2 — Col. 4 92.308% [1]
	(1)	(2)	(3)	(4)	(5)
1	$100,000	$4,000 [2]	$3,692	$1,754 [2]	$2,073
2	98,245	7,860	7,255	3,263	4,243
3	94,736	7,579	6,996	2,788	4,422
4	91,227	7,298	6,737	2,346	4,571
5	87,718	7,017	6,477	1,935	4,691
6	84,209	6,737	6,218	1,553	4,785
7	80,700	6,456	5,959	1,198	4,854
8	77,191	6,175	5,700	868	4,899
9	73,682	5,895	5,441	561	4,924
10	70,173	5,614	5,182	275	4,928
11	66,664	5,333	4,923	9	4,914
12	63,155	5,052	4,663	(238)	4,883
13	59,646	4,772	4,404	(468)	4,836
14	56,137	4,491	4,146	(681)	4,774
15	52,628	4,210	3,886	(879)	4,698
16	49,119	3,930	3,626	(1,021)	4,569
17	45,610	3,649	3,368	(1,021)	4,310
18	42,101	3,368	3,108	(1,021)	4,051
19	38,592	3,087	2,049	(1,021)	3,792
20	35,083	2,807	2,590	(1,021)	3,533
21	31,574	2,526	2,332	(1,021)	3,274
22	28,065	2,245	2,072	(1,021)	3,015
23	24,556	1,964	1,813	(1,021)	2,755
24	21,047	1,684	1,554	(1,021)	2,497
25	17,538	1,403	1,295	(1,021)	2,237
26	14,029	1,122	1,035	(1,021)	1,978
27	10,520	842	777	(1,021)	1,720
28	7,011	561	518	(1,021)	1,460
29	3,502	280	258	(1,011)	1,192

[1] Assumed Federal income tax rate of 48%.
[2] Based on one-half year.

Docket No. RP69-41
Exhibit No. 32 (VM-7)
Page 2 of 2

TEXAS GAS TRANSMISSION CORPORATION

Comparison of Total Federal Income Taxes Under Straight-Line or DDB Depreciation Assuming 60% Debt Financing, 20 Year Sinking Fund

Net Book Investment Per Col. 7 of Ex. (WJP-2) Rate Base	Return @ 8% Col. 1 × 8%	Interest [1]	Federal Income Taxes Under Straight-Line Depreciation Col. 2 — Col. 3 × 92.308% [1]	Excess of DDB Over Straight-Line Depreciation Per Col. 4 of Ex. (WJP-2)	Federal Income Taxes Under DDB Depreciation Col. 2 — Col. —Col. 5 × 92.309% [2]
(1)	(2)	(3)	(4)	(5)	(6)
$100,000	$4,000 [3]	$1,950 [3]	$1,892	$1,754 [3]	$ 273
98,245	7,860	3,802	3,746	3,263	734
94,736	7,579	3,608	3,666	2,788	1,092
91,227	7,298	3,412	3,587	2,346	1,422
87,718	7,017	3,218	3,507	1,935	1,721
84,209	6,737	3,022	3,429	1,553	1,996
80,700	6,456	2,828	3,349	1,198	2,243
77,191	6,175	2,632	3,270	868	2,469
73,682	5,895	2,438	3,191	561	2,673
70,173	5,614	2,242	3,113	275	2,859
66,664	5,333	2,048	3,032	9	3,024
63,155	5,052	1,852	2,954	(238)	3,174
59,646	4,772	1,658	2,874	(468)	3,306
56,137	4,491	1,462	2,796	(681)	3,425
52,628	4,210	1,268	2,716	(879)	3,527
49,119	3,930	1,072	2,638	(1,021)	3,581
45,610	3,649	878	2,558	(1,021)	3,500
42,101	3,368	682	2,479	(1,021)	3,422
38,592	3,087	488	2,399	(1,021)	3,342
35,083	2,807	292	2,322	(1,021)	3,264
31,574	2,526	49	2,286	(1,021)	3,229
28,065	2,245	—	2,072	(1,021)	3,015
24,556	1,964	—	1,813	(1,021)	2,755
21,047	1,684	—	1,554	(1,021)	2,497
17,538	1,403	—	1,295	(1,021)	2,238
14,029	1,122	—	1,036	(1,021)	1,978
10,520	842	—	777	(1,021)	1,720
7,011	561	—	518	(1,021)	1,460
3,502	280	—	258	(1,011)	1,192

[1] Assumed $60,000 debt with sinking funds of $1,500 in years 1 and 21 and sinking fund increased annually for the years 2 through 20. Interest was computed at 6½%.
[2] Assumed Federal income tax rate of 48%.
[3] Based on one-half year.

1281

Hearing Exhibit No. 33

Docket No. RP69-41
Exhibit No. 33 (VM-8)

TEXAS TRANSMISSION CORPORATION

Comparison of Annual "Cost of Service" Reductions Due to Decline in Return and Federal Income Tax Requirements on the Basis of (1) Reverted Straight-Line Tax Depreciation and (2) Continued Liberalized Depreciation With Flow-Through and Ability To Absorb Annual Wage Increases

Year	Reductions Due to Decline in Return and Federal Income Tax Requirements on the Basis of Reverted Straight-Line Tax Depreciation [1] Column (1)	Annual Difference in Wage Cost [2] (Column (2)	Reductions Due to Decline in Return and Federal Income Tax Requirements on the Basis of Continuing DDB Tax Depreciation [1] Column (3)
1970	$(1,050,000)	$1,105,000	$ (193,000)
1971	(1,092,000)	1,183,000	(281,000)
1972	(1,102,000)	1,265,000	(385,000)
1973	(1,055,000)	1,354,000	(458,000)
1974	(1,005,000)	1,449,000	(558,000)
Totals	$(5,304,000)	$6,356,000	$(1,875,000)

NOTES: [1] Return requirements were computed by maintaining a constant return on Common Equity and recovering annual capital costs on all other securities. Federal Income Tax computation assumes a 50% corporate tax rate.

1393

Item A

TEXAS GAS TRANSMISSION CORPORATION
3800 Frederica Street
Owensboro, Kentucky 42301
Phone: 502/683-2431

V. W. Meythaler, Senior Vice President

June 26, 1969

Federal Power Commission
441 G Street, N. W.
Washington, D. C. 20426

Attention: Mr. Gordon M. Grant, Secretary

Gentlemen:

Pursuant to the requirements of Section 4 of the Natural Gas Act and the applicable provisions of Section 154.63 of the Commission's Regulations thereunder, Texas Gas Transmission Corporation (Texas Gas) files herewith ten (10) copies of a rate filing (Volumes I, II and III) and a specified number of copies of certain other material, as described below.

Material Submitted

Volume I of the rate filing contains the following items:

1. (a) A letter of transmittal containing a list of the material enclosed with the rate filing.

   (b) A statement of the nature, the reasons, and the bases for the proposed change.

   (c) A list of names and addresses of: (i) all affected customers purchasing gas under Texas Gas' FPC Gas Tariff, Second Revised Volume No. 1; (ii) all affected companies for whom Texas Gas' transportation service is performed under Texas Gas' FPC Gas Tariff, Original Volume No. 2; and (iii) the

regulatory commissions of the States of Louisiana, Arkansas, Mississippi, Tennessee, Kentucky, Illinois, Indiana and Ohio, these being the states in which Texas Gas' jurisdictional resale customers distribute gas.

1384

(d) A statement of Texas Gas' chief accounting officer as required by Section 154.63(e)(5) of the Commission's Regulations.

(e) An opinion of independent public accountants as required by Section 154.63(e)(6) of the Commission's Regulations.

(f) Original and revised tariff sheets (herein referred to as "Proposed Tariff Sheets") of Texas Gas' FPC Gas Tariff, Second Revised Volume No. 1, as follows:

Original Sheet Nos. 102-B, 102-C, 102-D, and 102-E;

First Revised Sheet Nos. 6, 10, 12, 16, 18, 22, 24, 28, 32-A, 36-A, 40-A, 44-A, 46, 48, 50, 52, 54, 56, 58, 60, 60-B, 62, 64, 66, 68, 84, 85, and 86;

Ninth Revised Sheet No. 68-I;

Tenth Revised Sheet Nos. 60-A, 68-BB, and 70-A;

Eleventh Revised Sheet Nos. 13, 15, and 68-C;

Twelfth Revised Sheet Nos. 7, 9, 19, 21, 25, 27, and 71;

Fifteenth Revised Sheet Nos. 68-G, 68-H, 68-K, and 68-L;

Eighteenth Revised Sheet Nos. 68-A, 68-B, 68-E, and 68-F;

Nineteenth Revised Sheet Nos. 45, 47, 51, 79-I, and 79-J;

Twentieth Revised Sheet Nos. 5, 11, 23, 29, 33, 41, 49, 53, 55, 59, 61, 63, 67, 69, 70, 73, and 74;

Twenty-First Revised Sheet Nos. 17, 31, 35, 37, 43, 57, and 65; and

Twenty-Second Revised Sheet No. 39.

(g) Original and revised tariff sheets (herein referred to as "Alternate Proposed Tariff Sheets") of Texas Gas' FPC Gas Tariff, Second Revised Volume No. 1, as follows:

1395

First Revised Sheet Nos. 6, 12, 18, 24, 84, 85, and 86;

Ninth Revised Sheet No. 68-I;

Tenth Revised Sheet Nos. 60-A, 68-BB, and 70-A;

Eleventh Revised Sheet Nos. 13, 15, and 68-C;

Twelfth Revised Sheet Nos. 7, 9, 19, 21, 25, 27, and 71;

Fifteenth Revised Sheet Nos. 68-G, 68-H, 68-K, and 68-L;

Eighteenth Revised Sheet Nos. 68-A, 68-B, 68-E, and 68-F;

Nineteenth Revised Sheet Nos. 45, 47, 51, 79-I, and 79-J;

Twentieth Revised Sheet Nos. 5, 11, 23, 29, 33, 41, 49, 53, 55, 59, 61, 63, 67, 69, 70, 73 and 74;

Twenty-First Revised Sheet Nos. 17, 31, 35, 37, 43, 57, and 65; and

Twenty-Second Revised Sheet No. 39.

(h) Revised tariff sheets of Texas Gas' FPC Gas Tariff, Original Volume No. 2, as follows:

Sixth Revised Sheet No. 254; and

Third Revised Sheet No. 332.

(i) Statements A through F, inclusive.

Volume II of the rate filing contains Statement G.

Volume III of the rate filing contains Statements H through M and Statement O.

Volume IV of the rate filing contains the working papers and supporting data pursuant to Sections 154.63(e)(1) and 154.63(e)(4) and 154.63(c)(2) of the Commission's Regulations. Seven (7) sets of these working papers are being simultaneously furnished to the Chief, Pipeline Division, Bureau of Natural Gas.

In addition, seven (7) copies of Texas Gas' FPC Form No. 2, for the year ending December 31, 1968, are also being furnished to the Chief, Pipeline Division, Bureau of Natural Gas.

1396

Material to be Submitted

Statement P, containing testimony supporting the proposed rates and indicating the line of proof which the company will offer for its case in chief, will be furnished, at a subsequent date, in accordance with Section 154.63(b)(3) of the Commission's Regulations.

Proposed Effective Date

It is proposed that the enclosed tariff sheets designated "Proposed Tariff Sheets" be made effective on August 12, 1969. If the Commission does not grant the waiver of the provisions of Section 154.38(d)(3) of its Regulations,

as hereinafter requested, then it is requested that the enclosed tariff sheets designated "Alternate Proposed Tariff Sheets" be made effective on August 12, 1969.

It is to be noted that forty-five (45) days notice has been allowed in accordance with Section 154.63(e)(4) of the Commission's Regulations.

Posting

Copies of this letter of transmittal, as well as Volumes I, II, and III have been mailed to each of the persons and State Commissions set forth in Volume I hereof. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available, during regular business hours, for public inspection in a convenient form and place at Texas Gas' main offices in Owensboro, Kentucky.

Purchased Gas Adjustment Clause—Request for Waiver

Certain of the "Proposed Tariff Sheets" include a purchased gas adjustment clause, or incorporate the aforesaid clause by reference thereto. Section 154.38(d)(3) of the Commission's Regulations prohibits the inclusion of such a clause in a rate schedule. It is submitted that the reasons underlying the Commission's adoption of the aforesaid section of the Regulations are no longer applicable. Therefore, Texas Gas hereby requests the Commission

to waive the provisions of that section in the event, and to the extent, that the Commission determines such a waiver to be necessary so that the question of whether such a purchased gas adjustment clause should be permitted to become effective, as a part of Texas Gas' tariff, may be considered in the instant proceeding.

If the Commission does not grant the waiver, as hereinabove requested, then Texas Gas proposes that the enclosed tariff

sheets designated "Alternate Proposed Tariff Sheets" be considered to have been filed in lieu of, and in substitution for, the revised tariff sheets designated as "Proposed Tariff Sheets." The "Alternate Proposed Tariff Sheets" eliminate all references to the purchased gas adjustment clause. In any event, Texas Gas proposes to raise, as an issue in this proceeding, the question of whether a purchased gas adjustment clause should be incorporated into Texas Gas' tariff.

Federal Income Tax Surcharge

Texas Gas has included in its cost of service the currently effective 10 percent Federal income tax surcharge. The presently effective Federal income tax surcharge is scheduled to expire on June 30, 1969. In the event that this surcharge is permitted to expire or is continued in effect at a reduced rate, and such event occurs prior to the date upon which the proposed increase in rates becomes effective, Texas Gas will file substitute tariff sheets reflecting elimination or reduction of the aforesaid surcharge.

Yours very truly,

/s/ V. W. MEYTHALER

Enclosures

1398

Item B

STATEMENT OF THE NATURE, BASES AND REASONS FOR CHANGES IN TARIFF

Nature of Changes

The tariff sheets filed herewith, when made effective, will increase the charges for service under all of the rate schedules in Texas Gas' FPC Gas Tariff, Second Revised Volume No. 1, and will increase the charges for transportation service to Consolidated Gas Supply Corporation and Gulf Oil Corporation under Rate Schedules Nos. X-21 and X-29, respectively, which are contained in Texas Gas' FPC

Gas Tariff, Original Volume No. 2. The increase in jurisdictional revenues amounts to $36,813,407 per year, based upon the adjusted volumes for the twelve months ended March 31, 1969.[1] Other tariff changes relate to: (1) a modification of the billing demand under Rate Schedules G-1, G-2, G-3 and G-4; (2) a modification of the measurement provisions in the General Terms and Conditions; and, (3) the inclusion of a purchase gas adjustment section in the General Terms and Conditions.

Reasons and Bases of Changes

The increase in rates has been occasioned by increases in costs which are known and are measurable and which are now effective or will become effective within nine months of March 31, 1969, which is the

last month of actual experience reflected in the supporting statements. The increase is mainly attributable to: (1) the increase in rates filed by Texas Eastern Transmission Corporation, a major supplier of Texas Gas, which became effective, subject to refund, on May 15, 1969 in Docket No. RP69-13; (2) increases in cost of gas purchased as a result of purchase of new supplies of gas under new higher priced contracts, as well as increases in the cost of gas under existing contracts; (3) costs related to transportation of gas by others for the delivery of new offshore gas supplies; (4) the proposed discontinuance of the use of liberalized depreciation and the reversion to a straightline method of tax depreciation; (5) costs related to new underground storage facilities; (6) salary and wage increases; and (7) the rate of return required to maintain the financial stability of, and investor confidence in, Texas Gas.

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[1] Based upon the actual volumes of sales and transportation during the twelve months ended March 31, 1969, the increase in jurisdictional revenues amounts to $32,634,612 annually (Statement G, Schedule G-1).

The change in the billing demands under Rate Schedules G-1, G-2, G-3 and G-4 is designed to assure the collection of demand revenues to reimburse the company for at least a portion of the fixed costs associated with additional capacity constructed for the customer's use. Under the currently effective billing demand provisions of the G rate schedules (known as a 90% ratchet), the customer does not pay a demand charge on more than 90% of his contract demand, unless his actual deliveries on any day, during the preceding 12 months, exceed that volume and, then, only to that extent. Therefore, under the existing tariff, unless the actual deliveries to a customer purchasing gas under the G rate schedules exceed 90% of his contract demand on any day, no additional demand revenues are received to help offset the fixed costs associated with the new capacity. It is Texas Gas's position that, in view of

1400

the potential magnitude of this exposure, and the currently high cost of capital, the ratchet associated with present contract demands should be increased to 95%. With respect to future increases in contract demands, it is proposed that a demand charge will be based on the entire increment but, at th same time, maintaining the flexibility under the old contract demand to the extent of 5%.

The change in the measurement provisions in the General Terms and Conditions provides for the use of the procedures and factors specified in the current *American Gas Association Gas Measurement Committee Report No. 3* in lieu of the superseded *Report No. 2*. *Report No. 3* is the most comprehensive and most accurate method of computing volumes of measured gas currently available. It takes into account more of the factors and variables that affect gas measurement than any other known method. The proposed change in the measurement provisions will not result in an increase in revenues to Texas Gas.

The incorporation of a purchased gas adjustment clause is designed to equitably reflect, in the billing for gas sold to customers by Texas Gas, the actual incurred cost of gas purchased by Texas Gas. These costs are the major item of expense in a pipeline's operation. The inclusion of this purchased gas adjustment clause in the tariff of Texas Gas should substantially reduce frequency of rate increase filings by the company, thus tending to stabilize the basic price structure. The purchased gas adjustment clause does not state the reference base cost of gas, leaving the reference

1401

amount blank. Texas Gas proposes that, at the time this clause becomes effective, it (Texas Gas) will compute the appropriate base cost of gas and insert such cost in this blank.

Texas Gas has also included, in its proposed purchased gas adjustment clause, refunding procedures relating to refunds received by Texas Gas from its supplier of gas. These procedures are substantially the same as those which have been incorporated, historically, in Texas Gas's rate settlement agreements.

The proposed rates have been designed, basically, on zone costs as more fully explained in Statement K.

There is set forth below a comparison of the presently effective and proposed rates:

	Zone 1		Zone 2		Zone 3		Zone 4	
	Presently Effective	Proposed	Presently Effective	Proposed	Presently Effective	Proposed	Presently Effective	Proposed
SALES								
G, CD, CDL								
Demand	$ 1.25	$ 1.74	$ 1.63	$ 1.95	$ 1.90	$ 2.32	$ 2.58	$ 3.00
Commodity	20.96¢	24.50¢	21.12¢	25.00¢	21.80¢	25.50¢	22.66¢	26.50¢
Variation	4.11¢	5.72¢	5.36¢	6.41¢	6.25¢	7.63¢	8.48¢	9.90¢
SG								
Base-Load	25.89¢	31.50¢	28.89¢	34.50¢	32.39¢	38.00¢	34.39¢	40.00¢
Excess	36.89¢	42.50¢	39.89¢	45.50¢	43.39¢	49.00¢	45.39¢	51.00¢
I, EM, XS	25.07¢	30.22¢	26.48¢	31.41¢	28.05¢	33.13¢	31.14¢	36.45¢
ACQ					28.05¢	33.13¢		
TRANSPORTATION								
X-21								
Demand							$ 1.98	$ 2.20
Commodity							8.50¢	9.80¢
X-29								
Commodity							11.31¢	11.82¢

1833

[Docketed July 3, 1969]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. RP69-41

TEXAS GAS TRANSMISSION CORPORATION

Notice of Proposed Changes in Rates and Charges

(July 3, 1969)

Take notice that Texas Gas Transmission Corporation (Texas Gas) on June 27, 1969, tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1, and Original Volume No. 2, to become effective on August 12, 1969. The proposed rate changes would increase charges for jurisdictional sales and transportation services by $36,813,407 annually, based on volumes for the twelve month period ended March 31, 1969, as adjusted. The proposed increase would be applicable to all of Texas Gas' jurisdictional rate schedules. Texas Gas also proposes a modification of the billing demand ratchet provision under Rate Schedules G-1, G-2, G-3 and G-4 from the existing 90% of contract demand, and a modification of the measurement provisions in the General Terms and Conditions.

Texas Gas states the principal reasons for the proposed rate increases are (1) increases in its cost of purchased gas; (2) costs of transportation by others of new offshore gas supplies and costs related to new underground storage facilities; (3) the proposed reversion from liberalized depreciation to straight line depreciation for tax purposes; (4) salary and wage increases; and (5) the need for an 8.5 percent rate of return.

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1835

[Docketed July 14, 1969]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. RP69-41

TEXAS GAS TRANSMISSION CORPORATION

Motion To Reject Rate Filing

Comes now Memphis Light, Gas and Water Division (Memphis), a customer of Texas Gas Transmission Corporation (Texas Gas) and petitioner for intervention, and moves the Commission to reject the changes filed on June 27, 1969 by Texas Gas in its FPC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, proposed to become effective on August 12, 1969, for the following reasons:

1. The changes filed by Texas Gas include a purchased gas adjustment provision prohibited by Section 154. 38(d)(3) of the Commission's Regulations under the Natural Gas Act.

2. The changes filed by Texas Gas are based upon the use of straight line depreciation instead of liberalized depreciation for tax purposes contrary to judicially-affirmed Commission rule and precedent.

1836

STATEMENT OF FACTS

On June 27, 1969, Texas Gas filed changes in its FPC Gas Tariff, Second Revised Volume No. 1, and Original Volume No. 2, to become effective August 12, 1969, proposing an annual increase in jurisdictional rates of $36,813,407, based on the 12 months ended March 31, 1969, as adjusted. Of this increase, approximately $5,500,000 annually would be borne by Memphis.

The rate change filing includes alternate sets of revised tariff sheets. One set, designated "Proposed Tariff Sheets", incorporates a purchased gas cost adjustment clause which is set forth in Section 23 of the General Terms and Conditions appearing on proposed Original Sheets No. 102-B through 102-E, inclusive. The other set, designated "Alternate Proposed Tariff Sheets", excludes the purchased gas adjustment clause.

Texas Gas has requested the Commission to waive Section 154.38(d)(3) of its Regulations under the Natural Gas Act, which prohibits inclusion of purchased gas cost adjustment clauses in rate schedules, and to accept for filing the tariff sheets that reflect such clause. Texas Gas proposes that if the Commission does not grant the waiver, the Commission accept for filing the "Alternate Proposed Tariff Sheets".

Texas Gas has also based its increase in rates on a federal income tax allowance calculated on the assumption that straight line depreciation is used by Texas Gas for federal income tax purposes

instead of liberalized depreciation. If Texas Gas had included a federal income tax allowance in its cost of service based on the use of liberalized depreciation, the annual rate increase of $36,813,407 would be substantially less.

ARGUMENT

The Commission has recently held that tariff sheets that include a purchased gas cost adjustment clause should be rejected, and has also denied waiver of its Regulations banning such clauses. *Natural Gas Pipeline Company of America*, Docket No. RP69-36, Order issued June 26, 1969. The Commission there said (mimeo ed., p. 2):

> The reasonableness of including a purchased gas adjustment provision in Natural's tariff has not been

tested in any evidentiary proceeding. If accepted at this time, this provision would become operative after suspension. The purchased gas adjustment provision raises a number of substantive issues which should be fully explored and resolved before the rates and charges to Natural's customers are subjected to changes by application of this proposed adjustment provision. Accordingly, we deem it inappropriate at this time to waive the provisions of Section 154.38(d)(3) of the Commission's Regulations under the Natural Gas Act to permit the filing of Natural's set of revised tariff sheets containing a purchased gas adjustment provision.

The Commission's ruling is decisive in this case, and for the same reasons as expressed in *Natural Gas Pipeline, supra*, the "Proposed Tariff Sheets" tendered by Texas Gas for filing must also be rejected.

1838

Texas Gas has included in the cost of service submitted in support of its proposed rates a substantial element which as a matter of law and Commission precedent is not allowable. Texas Gas has calculated its federal income tax allowance on the basis of straight line depreciation, instead of making use of the liberalized depreciation method, which would reduce its cost of service by many millions of dollars, and which this Commission has ruled must be used by pipelines for rate-making purposes. *Midwestern Gas Transmission Company, et al.*, Opinions No. 497 and 497-A (July 15 and Sept. 9, 1966, 36 FPC 61 and 36 FPC 599, affirmed 388 F. 2d 444 (CA 7, 1968).

In that case the Commission ruled that rates should be based on costs of services and revenue requirements resulting from the computation of federal income taxes on the basis of liberalized depreciation tax deductions, even though the natural gas company has reverted to the use

of straight line depreciation in its tax returns. The Commission made the general finding that (36 FPC at 85):

> (5) There is no present factual justification for basing the Federal income tax allowances for natural gas companies which maintain either a growing or stable plant on straight-line depreciation tax deductions when liberalized depreciation tax savings are available to such companies, without any genuine detriment or material risk.

The extent to which this unauthorized element of cost affects the rates sought herein by Texas Gas is not apparent from the face

of the filings, but it is clearly substantial.[1]

The filing by Texas Gas, therefore, demonstrates upon its face that the rates which it seeks are not justified and cannot be just and reasonable rates, as required by the Natural Gas Act. Said rates are, therefore, unlawful upon their face and should be rejected.

As was the case in the Natural Gas Pipeline Company proceeding above cited, the reasonableness of including a tax allowance based on straight line depreciation, contrary to the Commission's rule, has not been tested in any evidentiary proceeding but the rates resulting from such allowance would become operative after suspension, if accepted at this time. The issues raised by Texas Gas' clear violation of a Commission ruling "should be fully explored and resolved before the rates and charges to [its] customers are subjected to changes by application of this proposed . . . provision." *Natural Gas Pipeline Company, supra.* Commission prescribed rules may not be vitiated by unilateral action under Section 4(d) of the Act.

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[1] Texas Gas has publicly informed its customers that the item increases costs by $5,000,000. Our analysis indicates that the actual figure may be $7,000,000.

WHEREFORE, for each and all of the reasons set forth above, Memphis' motion should be granted and the rate filing of Texas Gas rejected.

Respectfully submitted,

MEMPHIS LIGHT, GAS AND WATER DIVISION

By REUBEN GOLDBERG
Reuben Goldberg
Its Attorney

REUBEN GOLDBERG
ALLAN FERIDSON
1250 Connecticut Avenue
Washington, D. C. 20036

GEORGE E. MORROW
Union Planters National Bank Building
Memphis, Tennessee 38103

Attorneys for Memphis Light, Gas and Water Division

1841

VERIFICATION

DISTRICT OF COLUMBIA: ss

Reuben Goldberg, being duly sworn, deposes and says that he is the attorney for Memphis Light, Gas and Water Division and that he is authorized, on behalf of said Division, to execute and file the foregoing Motion to Reject Rate Filing; that he has read said motion and is familiar with the contents thereof, and that the matters and things set forth are true and correct to the best of his knowledge, information, and belief.

/s/ REUBEN GOLDBERG
Reuben Goldberg

Subscribed and sworn to before me this 14th day of July, 1969.

LAWRENCE A. SINCLITICO
Notary Public

My Commission Expires May 14, 1972.

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1880

[Docketed Aug. 11, 1969]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Pipeline Rates—Suspension of Proposed Increased Rates —Motion to Reject Rate Filing Denied

Before Commissioners: John N. Nassikas, Chairman; L. J. O'Connor, Jr., John A. Carver, Jr., and Albert B. Brooke, Jr.

Docket No. RP69-41

TEXAS GAS TRANSMISSION CORPORATION

Order Providing for Hearing, Suspending Proposed Alternate Revised Tariff Sheets, and Denying Motion To Reject Rate Filing

(Issued August 11, 1969)

On June 27, 1969, Texas Gas Transmission Corporation (Texas Gas) tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, to become effective on August 12, 1969.[1] The proposed rate changes would increase charges for jurisdictional sales and transportation services by $36,-

1881

813,407 annually, based on sales for the twelve month period ended March 31, 1969, as adjusted. Rates would be in-

[1] The tariff sheets (described by Texas Gas as "alternate proposed tariff sheets") hereinafter suspended are as follows: First Revised Sheet Nos. 6, 12, 18, 24, 84, 85, and 86; Ninth Revised Sheet No. 68-I; Tenth Revised Sheet Nos. 60-A, 68-BB, and 70-A; Eleventh Revised Sheet Nos. 13, 15, and 68-C; Twelfth Revised Sheet Nos. 7, 9, 19, 21, 25, 27, and 71; Fifteenth Revised Sheet Nos. 68-G, 68-H, 68-K, and 68-I; Eighteenth Revised Sheet Nos. 68-A, 68-B, 68-E, and 68-F; Nineteenth Revised Sheet Nos. 45, 47, 51, 79-I, and 79-J; Twentieth Revised Sheet Nos. 5, 11, 23, 29, 33, 41, 49, 53, 55, 59, 61, 63, 67, 69, 70, 73 and 74; Twenty-First Revised Sheet Nos. 17, 31, 35, 37, 43, 57, and 65; and Twenty-Second Revised Sheet No. 39 of Second Revised Volume No. 1; and Sixth Revised Sheet No. 254 and Third Revised Sheet No. 332 of Original Volume No. 2.

creased under all sales rate schedules and under transportation rate schedules X-21 and X-29. The filing also proposes a modification of the billing demand ratchet provision under Rate Schedules G-1, G-2, G-3 and G-4 from the existing 90 percent of contract demand to 95 percent of contract demand, and a modification of the measurement provisions in the General Terms and Conditions.

Texas Gas' filing consists of two alternate sets of revised tariff sheets, the first of which contains a proposed new section, to be included in the General Terms and Conditions of the tariff, providing for monthly billing adjustments to reflect current changes in Texas Gas' unit cost of purchased gas.[2] Texas Gas requests that, if the Commission finds that the proposed purchased gas adjustment provision is prohibited by Section 154.38(d)(3) of the Commission's Regulations Under the Natural Gas Act and does not waive the terms of that Section for purposes of Texas Gas' filing, the Commission accept for filing the alternate set of revised tariff sheets, which does not contain a purchased gas adjustment provision.

Texas Gas states that the principal reasons for the proposed rate increases are: (1) increases in its cost of purchased gas; (2) costs of transportation by others of new offshore gas supplies and costs related to new underground storage facilities; (3) the proposed reversion from liberalized depreciation to straight line depreciation for tax purposes; (4) salary and wage increases; and (5) the need for an 8.5 rate of return.

Memphis Light, Gas and Water Division of the City of Memphis, Tennessee (Memphis), on July 14, 1969, filed a motion to reject Texas Gas' rate filing. As grounds for its motion Memphis contends that the proposed tariff changes (1) include a purchase gas adjustment provision

[2] The tariff sheets setting forth Texas Gas' proposed purchase gas adjustment provision are Original Sheets Nos. 102-B, 102-C, 102-D and 102-E.

which is prohibited by Section 154.38(d)(3) of the Commission's Regulations under the Natural Gas Act and (2) are based upon the use of straight line tax depreciation instead of liberalized depreciation for

1882

tax purposes which Memphis says is contrary to our Opinion No. 497, 497-A.[3] Texas Gas on July 24, 1969, filed its answer to Memphis' motion.[4]

Memphis' contentions raise substantive issues which should be heard in formal proceedings. Memphis' first contention is disposed of by our rejection herein of Texas Gas' revised tariff sheets containing the purchased gas adjustment provision. The objection to the use of straight line tax depreciation goes to the merits of the filing rather than to the question of compliance with our filing requirements with respect to which failure to comply would prompt our rejection of the filing.[5]

The reasonableness of including a purchased gas adjustment provision in Texas Gas' tariff has not been tested in any evidentiary proceeding. If accepted at this time, this provision would become operative after suspension. The purchased gas adjustment provision raises a number of substantive issues which should be fully explored and resolved before the rates and charges to Texas Gas' customers are subjected to changes by application of this

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[3] *Midwestern Gas Transmission Company*, 36 FPC 61, 36 FPC 599, (1966) affirmed *sub. nom. Midwestern Gas Transmission Company* v. *FPC*, 388 F.2d 444 (CA 7, 1968).

[4] On August 1, 1969, Texas Gas, in order to comply with Section 154.63(e)(1) of the Commission's regulations under the Natural Gas Act, filed additional working papers showing the computation of its claim for Federal income taxes, for the test period, reflecting the flow through of liberalized depreciation in accordance with the order issued November 8, 1966, in Docket No. RP67-10.

[5] *Mississippi River Fuel Corp.* v. *FPC*, 202 F.2d 899, (CA 8, 1953).

proposed adjustment provision. Accordingly, we deem it inappropriate at this time to waive the provisions of Section 154.38(d)(3) of the Commission's Regulations under the Natural Gas Act to permit the filing of Texas Gas' set of revised tariff sheets containing a purchased gas adjustment provision. During the pendency of this proceeding, and prior to the determination of this issue, however, Texas Gas will not be precluded from requesting permission to track supplier rate increases which increase the purchased gas costs filed by Texas Gas in this proceeding.

1883

Review of the filing indicates that certain issues are raised which require development in evidentiary proceedings. The proposed increased rates and charges have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

We contemplate that some of the issues involved in this proceeding may be susceptible of hearing and decision within the five months suspension period or shortly thereafter. In order that the collection and refunding of any possible excess charges may be avoided or limited, we are authorizing the Presiding Examiner to determine which issues, if any, may be tried in an initial phase of the hearing.

Twenty-one of Texas Gas' customers have filed petitions for leave to intervene in this proceeding. Notices of Intervention by municipal and State bodies having jurisdiction over the regulation of rates and charges for the sale of natural gas have been filed by City of Cincinnati, City of Columbus, and City of Toledo, all of Ohio, Public Service Commission of Kentucky, Public Service Commission of the State of New York, and Tennessee Public Service Commission.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Texas Gas' FPC Gas Tariff, as proposed to be amended herein, and that the proposed tariff sheets listed in footnote (1) above be suspended, and the use thereof be deferred as herein provided.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the disposition of this proceeding be expedited in accordance with the procedures set forth below.

1884

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing be held commencing on September 25, 1969, 10:00 a.m. (EDST) in a hearing room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C. 20426, concerning the lawfulness of the rates, charges, classifications, services contained in Texas Gas' FPC Gas Tariff, as proposed to be amended herein.

(B) Pending such hearing and decision thereon, Texas Gas' revised tariff sheets listed in footnote (1) above are hereby suspended and the use thereof is deferred until January 12, 1970 and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Texas Gas' revised tariff sheets proposing a purchased gas adjustment provision are hereby rejected for filing. These proposed tariff sheets may be made a part

of the record herein, to be considered along with any modifications thereof or alternative provisions submitted by the parties or the Commission Staff, as a proposed purchased gas adjustment provision to be included in Texas Gas' tariff.

(D) At the hearing on September 25, 1969, Texas Gas' prepared testimony (Statement P), filed and served on July 14, 1969, together with its entire rate filing as submitted and served on June 27, 1969, as supplemented on August 1, 1969, be admitted to the record as Texas Gas' complete case-in-chief as provided by Section 154.63(e)(1) of the Commission's Regulations under the Natural Gas Act, and Order No. 254, 28 FPC 495, subject to appropriate motions, if any, by parties to the proceeding.

(E) Following admission of Texas Gas' complete case-in-chief, the parties shall present their views and the Presiding Examiner, in the exercise of his discretion, shall determine

1885

which issues, if any, shall be heard in an initial phase hearing; fix dates for service of Staff's and Interveners' evidence on such issues and service of Texas Gas' rebuttal testimony; fix dates for witnesses to appear for adoption of their testimony and to stand cross-examination thereon; and proceed with such hearing as expeditiously as feasible. The Examiner shall thereafter fix dates for service of testimony and cross-examination on all issues not being heard in the first phase hearing.

(F) Presiding Examiner Walter T. Southworth, or any other designated by the Chief Examiner for that purpose [See Delegation of Authority, 18 CFR 3.5(d)], shall preside at the hearing in this proceeding; shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies ex-

pressed in Section 2.59 of the Commission's Rules of Practice and Procedure.

(G) The Motion to Reject Filing of Memphis Light, Gas and Water Division of the City of Memphis, Tennessee is denied.

By the Commission.

(SEAL) KENNETH F. PLUMB,
Acting Secretary.

* * * * * * * * * *

1892

[Docketed Sept. 16, 1969]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman; L. J. O'Connor, Jr., Carl E. Bagge, John A. Carver, Jr., and Albert B. Brooke, Jr.

Docket No. RP69-41

TEXAS GAS TRANSMISSION CORPORATION

Order Permitting Interventions

(Issued September 16, 1969)

Petitions requesting leave to intervene in this proceeding have been timely filed by the following petitioners:

Administrator of General Services
Arkansas-Missouri Power Company
Brooklyn Union Gas Company
The Cincinnati Gas and Electric Company and Lawrenceburg Gas Transmission Corporation
Columbia Gas of Ohio, Inc.
City of Columbus, Ohio
Consolidated Gas Supply Corporation

Covington Gas Department, Covington, Tennessee
City of Hamilton, Ohio
City of Henderson, Kentucky
Indiana Utilities Corporation
Louisville Gas and Electric Company
Memphis Light, Gas and Water Division, City of Memphis, Tennessee
Michigan Wisconsin Pipe Line Company

* * * * * * * * * *

1968

[Docketed October 20, 1969]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

INTERVENTION

Before Commissioners: John N. Vassikas, Chairman; Lawrence J. O'Connor, Jr., Carl E. Bagge, John A. Carver, Jr., and Albert B. Brooke, Jr.

Docket No. RP69-41

TEXAS GAS TRANSMISSION CORPORATION

Order Permitting Interventions

(Issued October 20, 1969)

Petitions requesting leave to intervene in this proceeding were filed by Texas Eastern Transmission Corporation, Rochester Gas and Electric Corporation and Jackson Utility Division of the City of Jackson, Tennessee after the date fixed for the filing of petitions to intervene. Each petitioner states that, through an oversight, it neglected to file its petition within the time prescribed.

Although these Petitions were not timely filed good cause exists for permitting such interventions.

The Commission finds:

The participation of the above-named petitioners in this proceeding may be in the public interest.

The Commission orders:

(A) The above-named petitioners are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* that the participation of such interveners shall be limited to matters affecting rights and interests specifically set forth in the respective petitions to intervene, and *Provided, further,* that the admission of such interveners shall not be construed as recognition by the Commission that they, or any of them, might be aggrieved because of

. . . . . .

2086

[Docketed December 1, 1969]

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. RP70-14

TEXAS GAS TRANSMISSION CORPORATION

Petition To Intervene of Memphis Light, Gas and Water Division and Objection to Waiver of Commission Regulation Respecting Purchased Gas Adjustment Clauses

Comes now Memphis Light, Gas and Water Division, City of Memphis, Tennessee (Memphis), and respectfully requests that it be permitted to intervene and become a party to this proceeding, and in support of this petition it respectfully states:

I

The exact name and address of petition is as follows:

Memphis Light, Gas and Water Division
179 Madison Avenue
Memphis, Tennessee 38101

II

The names, titles and post office addresses of the persons to whom correspondence or communications should be addressed in regard to this petition are as follows:

Calvin H. Henze, President
Memphis Light, Gas and Water Division
P. O. Box 388
Memphis, Tennessee 38101

Reuben Goldberg, Esq.
Allan Freidson, Esq.
1250 Connecticut Avenue
Washington, D. C. 20036

George E. Morrow, Esq.
Martin, Tate, Morrow & Marston
Union Planters National Bank Building
Memphis, Tennessee 38103

III

Memphis Light, Gas and Water Division is a division and agency of the City of Memphis, Tennessee, a municipal corporation, and was organized under Chapter 381 of the Private Acts of Tennessee for the year 1939, as amended. Among other things, it operates a local distribution system for the distribution and sale of natural gas throughout the City of Memphis and also in Shelby County, Tennessee. It is a city gate customer of Texas Gas Transmission Corporation (Texas Gas), and the natural gas required in the operation of its distribution system is purchased exclusively from Texas Gas.

IV

On November 7, 1969, Texas Gas tendered for filing in the above-entitled proceeding proposed changes in its

FPC Gas Tariff, Second Revised Volume No. 1, to become effective on December 16, 1969. The proposed rate changes would increase charges for jurisdictional sales by $5,031,437 annually, based on volumes for the 12-month period ended March 31, 1969, as adjusted. The proposed increases would be applicable to all of Texas Gas' sales rate schedules. The proposed increase to Memphis would be approximately $700,000 annually.

V

Texas Gas has included by reference the tariff sheets which the Commission rejected by its order issued August 11, 1969, in Docket No. RP69-41 because such sheets included therein a purchased gas adjustment clause which is proscribed by the provisions of Section 154.38(d)(3) of the Commission's Regulations under the Natural Gas Act. The Commission denied Texas Gas' request for waiver of said provisions. For the same reasons advanced by the Commission in its order issued August 11, 1969, the tariff sheets should again be rejected, and waiver of the provisions of Section 154.38(d)(3) should be denied.

VI

As a customer of Texas Gas, Memphis has a substantial interest in the proposed tariff changes and will be affected by them. Memphis is an interested party within the meaning of Section 15(a) of the Natural Gas Act. Its interest may be adversely affected by the Commission's final order herein. Memphis' interest is not adequately represented by any other party. Its intervention and participation in this proceeding is, therefore, necessary and appropriate.

Wherefore, Memphis prays that it be permitted to intervene in this proceeding and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and

to be heard by counsel upon brief and oral argument, if oral argument is granted. Memphis also prays that

the tariff sheets that include a purchased gas adjustment clause, tendered by Texas Gas, should be rejected, and waiver of the provisions of Section 154.38(d)(3) should be denied.

Respectfully submitted,

MEMPHIS LIGHT, GAS AND WATER DIVISION

By REUBEN GOLDBERG
Reuben Goldberg
Its Attorney

VERIFICATION

DISTRICT OF COLUMBIA: ss

Reuben Goldberg, being duly sworn, deposes and says that he is the attorney for Memphis Light, Gas and Water Division, and that he is authorized, on behalf of said Division, to execute and file the foregoing Petition to Intervene; that he has read said petition and is familiar with the contents theerof, and that all statements of fact therein set forth are true and correct, to the best of his knowledge, information and belief.

/s/ REUBEN GOLDBERG
Reuben Goldberg

Subscribed and sworn to before me
this 1st day of December, 1969.

J. F. MORRIS
Notary Public

My commission expires: Feb. 14, 1971.

2032

[Docketed December 15, 1969]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

PIPELINE RATES—Suspension of Proposed Increased Rates—Purchased Gas Adjustment

Before Commissioners: John N. Nassikas, Chairman; Lawrence J. O'Connor, Jr., Carl E. Bagge, John A. Carver, Jr., and Albert B. Brook, Jr.

Docket Nos. RP69-41, RP70-14

TEXAS GAS TRANSMISSION CORPORATION

Order Permitting Tracking of Purchased Gas Increase, Suspending Proposed Revised Tariff Sheets Pending Effectiveness of Supplier Rate Increase, and Consolidating Proceedings

(Issued December 15, 1969)

Texas Gas Transmission Corporation (Texas Gas), on November 7, 1969, tendered for filing in Docket No. RP70-14 proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1,[1] designed solely to track the rate increase filed by its supplier, United Gas Pipe Line Company (United), on October 31, 1969, in Docket No. RP70-13 and to become effective on December 16, 1969, or such other day as the increased rates proposed by United become

[1] The proposed revised tariff sheets are as follows: Tenth Revised Sheet No. 68-I; Eleventh Revised Sheet Nos. 60-A, 68-BB, and 70-A; Twelfth Revised Sheet Nos. 13, 15, and 68-C; Thirteenth Revised Sheet Nos. 7, 9, 19, 21, 25, 27, and 71; Sixteenth Revised Sheet Nos. 68-G, 68-H, 68-K, and 68-L; Nineteenth Revised Sheet Nos. 68-A, 68-B, 68-E, and 68-F; Twentieth Revised Sheet Nos. 45, 47, 51, 79-I, and 79-J; Twenty-First Revised Sheet Nos. 5, 11, 23, 29, 33, 41, 49, 53, 55, 59, 61, 63, 67, 69, 70, 73, and 74; Twenty-Second Revised Sheet Nos. 17, 31, 37, 43, 57, and 65; and Twenty-Third Revised Sheet No. 39.

effective subject to refund, or otherwise.[2] The proposed rate changes would increase charges for

2093

Texas Gas' jurisdictional sales by $5,031,437 annually, based upon volumes for the twelve month period ended March 31, 1969, as adjusted. Rates would be increased under all sales rate schedules.

Texas Gas requests waiver of Section 154.66(b) and (c) of the Commission's regulations to permit its filing of the proposed increased rates during the suspension period of the increased rates in Docket No. RP69-41,[3] in order that the proposed increased rates may become effective coincidentally with those of United.

Texas Gas states that in view of the fact that its proposed increased rates were filed within twelve months from the date of the filing of Statements A thru M, O and P in Docket No. RP-69-41; the proposed rate increase is filed to compensate only for an increase in the cost of purchased gas; and there has been no material change in its facilities, sales volumes and cost of service, other than cost of purchased gas, since the Docket No. RP69-41 filing, it is only required, under Section 154.63(b)(3) of the Commission's Regulations, to file with the Commission Statements L, M, and N as described in Section 154.63. Texas Gas submitted Statement L, which consists of the balance sheets as of the beginning and end of the twelve months ended September 30, 1969 and Statement M, which consists of an income statement for the twelve months ended September 30, 1969. Texas Gas also submitted schedules

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[2] United, in its filing, had requested that its proposed rates become effective on December 16, 1969. As hereinafter indicated those rates were suspended for five months to May 16, 1970.

[3] Docket No. RP69-41 involves a general rate increase filed by Texas Gas on June 27, 1969, which was suspended to January 12, 1970, by order issued August 11, 1969.

setting forth the data and computations from which the proposed increases in rates were derived.

Texas Gas requests waiver of the filing of Statement N on the grounds that it consists of an entire cost of service presentation which would merely duplicate the data which is submitted in the Docket No. RP69-41 filing. In lieu of Statement N, Texas Gas incorporates by reference all the exhibits, items by reference and the prepared testimony which it submitted to the record on September 25, 1969, in Docket No. RP69-41. The company states that it is willing to supply the data required by Statement N on a reasonably expeditious basis should the Commission or its staff determine that such data are necessary.

2094

We will accept Texas Gas' filing as being in accord with our intention, as expressed in our order issued August 11, 1969, in Docket No. RP69-41, to permit Texas Gas to track supplier rate increases which increase the purchased gas costs claimed by Texas Gas in that docket. And by reason of the facts set forth by Texas Gas, as mentioned above, it is our view that good cause exists for waiving the requirement of the filing of Statement N.

However, as the increased rates proposed herein are directly and entirely based upon the proposed rate increase of United in Docket No. RP70-13, which was suspended to May 16, 1970, by order issued December , 1969, Texas Gas' proposed rate filing should be suspended to that same date. The proposed rate increases have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful.

In view of the fact that Texas Gas' filing in Docket No. RP-70-14 proposes to further amend its tariff which is the subject of the proceedings in Docket No. RP69-41, as proposed to be amended by its filing in that docket, and that the cost and related data relied upon in support of both

filings is substantially the same, it is appropriate that Docket No. RP70-14 be consolidated with the proceedings in Docket No. RP69-41 for purposes of hearing and decision.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the proposed tariff sheets listed in Footnote 1, above be suspended and the use thereof be deferred as herein provided.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that Docket No. RP70-14 be consolidated for hearing and decision with with the proceedings in Docket No. RP69-41.

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The Commission orders:

(A) The provisions of Section 154.66(b) and (c) of the Commission's regulations under the Natural Gas Act are waived in order to permit the filing of the proposed rate increase by Texas Gas.

(B) The requirement for the filing of Statement N, as described in Section 154.63 of the Commission's regulations, is waived.

(C) Pending hearing and decision in Docket No. RP-70-14, as consolidated herein, the proposed revised tariff sheets, listed in Footnote 1 above, are suspended and the use thereof is deferred until May 16, 1970, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act, provided, however, that Texas Gas shall not make the increase proposed herein effective prior to the date that the increased rates proposed by United in Docket No. RP70-13 are made effective.

(D) The proceedings in Docket Nos. RP69-41 and RP70-14 are hereby consolidated for purposes of hearing and decision in the matters and issues involved therein.

By the Commission.

(SEAL)

GORDON M. GRANT,
Secretary.

2096

[Docketed December 23, 1969]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket Nos. RP69-41, RP70-14

TEXAS GAS TRANSMISSION CORPORATION

Erratum Notice

(December 23, 1969)

ORDER PERMITTING TRACKING OF PURCHASED GAS INCREASE, SUSPENDING PROPOSED REVISED TARIFF SHEETS PENDING EFFECTIVENESS OF SUPPLIER RATE INCREASE, AND CONSOLIDATING PROCEEDINGS

(Issued December 15, 1969)

Page 3, second paragraph, fourth line should read "order issued December 5, 1969, Texas Gas' proposed rate filing"

GORDON M. GRANT,
Secretary.

2097

[Docketed December 15, 1969]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. RP69-41

TEXAS GAS TRANSMISSION CORPORATION

Report of Motion To Omit Initial Decision

TO THE COMMISSION:

On Friday, December 12, 1969, at the close of the hearing on Phase I of this proceeding, counsel for the Commission's staff moved pursuant to section 1.30(c) of the Commission's Rules of Practice and Procedure that the Presiding Examiner's decision be waived and omitted, and that the Commission forthwith render its final decision in Phase I. The respondent, Texas Gas Transmission Corporation, joined in the motion, as did all intervenors whose counsel were present at the hearing that day; viz., Memphis Light, Gas and Water Division; Western Kentucky Gas Company; Louisville Gas and Electric Company; and Jackson, Tennessee, Utility Division. Counsel stated that the Staff does not desire oral argument; however, respondent and all other parties request oral argument before the Commission.

The motion, concurrences and argument in support of the motion appear at transcript pages 1070-1076, copies of which are transmitted herewith.

This proceeding was initiated by order of the Commission issued August 11, 1969, to determine the lawfulness of proposed changes in respondent's FPC Gas Tariff filed June 27, 1969. The proposed changes were suspended until January 12, 1970. Pursuant to the Commission's order, the Presiding Examiner determined that the proceeding

should be conducted in two phases—Phase I to cover the issues with respect to rate of return and principles applicable to the use of straight line versus accelerated depreciation, and related taxes.

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[Docketed December 23, 1969]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. RP69-41

TEXAS GAS TRANSMISSION CORPORATION

Notice Granting Motion for Waiver of Intermediate Decision

(December 23, 1969)

On December 12, 1969, Commission Staff Counsel moved pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure that the intermediate decision in Phase I of the above-designated matter be omitted. The respondent, Texas Gas Transmission Corporation, joined in the motion, as did all interveners whose counsel were present at the hearing that day. On December 15, 1969, the Examiner referred the motion to the Commission.

Upon consideration, the Commission finds that the due and timely execution of the Commission's functions imperatively and unavoidably requires the omission of the intermediate decision, and the motion therefor is granted.

By direction of the Commission.

/s/ GORDON M. GRANT
Gordon M. Grant,
Secretary.

2241

(Docketed Jan. 16, 1970)

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL POWER COMMISSION

Docket No. RP69-41 (Phase I)

TEXAS GAS TRANSMISSION CORPORATION

Memorandum Initial Brief for Western Kentucky Gas Company

* * * * * * * * * *

2242

STATEMENT

On June 27, 1969, pursuant to Section 4(d) of the Natural Gas Act, Texas Gas Transmission Corporation filed certain revised tariff sheets specifying new jurisdictional rates and charges. The effect of the proposed tariff changes, as estimated by Texas Gas, would be to increase that company's revenues from jurisdictional sales by some $37 million per annum. On August 11, 1969, pursuant to Section 4(e) of the Act, the Commission suspended the new tariff sheets until January 12, 1970 and set the matter down for hearing. Following discussion among the parties at the prehearing conference, the presiding examiner ruled that the proceedings be divided into two phases, the first phase to deal with the issues of (1) rate of return and (2) Texas Gas' proposal to revert to straight-line depreciation for

2243

Federal income tax purposes.[1]

[1] Texas Gas has utilized liberalized depreciation for tax purposes since 1955. It followed the practice of "normalization" from that year until October 1, 1966, when it reduced its rates so as to "flow through" the tax benefits resulting from rapid depreciation. During the 11-year period when it normalized, Texas Gas accrued a reserve for deferred taxes (Account 282) amounting to $13,143,624. See Texas Gas' FPC Form No. 2 Annual Report for 1968, pp. 227, 227(b).

The hearing in Phase I was held from December 9-12, 1969; testimony and exhibits were presented by witnesses for Texas Gas, the Memphis Light Gas & Water Division, and the Commission Staff. On December 23, the Commission issued a notice granting the Staff's unopposed motion to omit the intermediate decision procedure.

POSITION OF WESTERN KENTUCKY

Western Kentucky Gas Company distributes gas at retail in 102 communities in the State of Kentucky. The company's service area is in the process of economic expansion, and this is reflected in Western Kentucky's own growth record. Sales have more than doubled during the ten-year period since 1959. During the same period, service was extended to some 33 new communities and to over 34,000 new customers, with much of the growth reflected in sales to residential users.

Western Kentucky is the third largest purchaser (after Memphis and the Louisville Gas & Electric Company) under Texas Gas' general

service (or "G") rate schedules. It purchases gas in three of the four rate zones established under the Texas Gas tariff (Zones 2, 3 and 4), and the vast majority of its distribution system is wholly dependent upon Texas Gas as a source of supply.[2]

Western Kentucky's petition for leave to intervene in this proceeding was granted by order issued September 16, 1969.

Our positions with respect to the two issues set for hearing in Phase I of these proceedings are as follows:

I.

The Commission should allow Texas Gas a rate of return adequate, but no more than adequate, to assure that com-

[2] A non-integrated portion of Western Kentucky's system is supplied with gas purchased from Tennessee Gas Pipeline Company at a point near Danville, Kentucky.

pany's continued aibility to meet the growing demand for natural gas service generally, and, particularly, the growing demand in the areas served by Western Kentucky. In this connection, we are constrained to note that, as of this date, Texas Gas has yet to commit itself to any expansion program to meet customer demands in the 1970-71 heating season (see Tr. 399) and has stated that it will *not* propose *any* expansion program if, in this proceeding, it is limited to a seven and one-half percent rate of return

2245

(see Tr. 907). We have carefully considered the evidence bearing upon a proper rate of return for Texas Gas. Western Kentucky is well aware of the adverse effects of inflation and the current high cost of debt capital and is persuaded that Texas Gas is entitled to a higher rate of return than it has been allowed in the past. Accordingly, Western Kentucky suggests that in light of current economic conditions and trends, a rate of return in excess of 8 percent would be reasonable.

II.

A. If the Commission should determine that the "flow-through" procedure now followed by Texas Gas is no longer appropriate, we would urge that Texas Gas be required to continue to utilize liberalized depreciation for tax purposes but be allowed to "normalize" for rate purposes.[8] Normalization, as compared with a reversion to straight-line depreciation, would provide a greater cash flow for Texas Gas by

2246

diverting funds from the U. S. Treasury to the company. At the same time, it would benefit the consumer by provid-

[8] We have reviewed the recently enacted and highly complicated amendments to Section 167 of the Internal Revenue Code. It would appear that the amendments do not affect the Commission's authority to require Texas Gas to "flow-through" to the consumer the benefits derived from liberalized tax depreciation with respect to "pre-1970 public utility property." Thus, the amendments are not dispositive of the issue in this case.

ing, in effect, cost-free plant in an amount equal to the balance in the Account 282 reserve. We assume that Texas Gas would not object to this normalization procedure; witness Meythaler testified (Tr. 994) that he regarded normalization as preferable to a reversion to straight-line depreciation.[4]

B. As we attempted to illustrate by way of cross-examination (see Tr. 1052-1057), the record is cloudy with respect to the mechanics to be employed by Texas Gas in effecting any change in tax depreciation methods. Thus, if the Commission were to approve the proposed reversion to straight-line depreciation and authorize the higher rates that would result therefrom, it is by no means certain when, if ever, Texas Gas would in fact revert to that depreciation method for tax purposes. One reason for the company's inability to provide any firm

assurance on this matter is its uncertainty regarding the possibility of an appeal of any Commission order in this proceeding. If an appeal is pending at the time Texas Gas is required to file its 1970 tax return (September, 1971), the company will "evaluate the circumstances at that time" (Tr. 1057) in deciding upon the depreciation method to be utilized in filing its return.[5]

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[4] We do not understand the reason for the company's apparent preference for straight-line depreciation unless it lies in the view expressed by their witness that the normalization procedure would be more costly to the ratepayer (Tr. 994). This view is based upon a premise we believe to be unsound; namely, that a switch to normalization on a prospective basis would also require a retroactive assessment for the period 1966-1969, during which time the benefits of liberalized depreciation were flowed through to the customers in the form of lower rates rather than credited to the Account 282 reserve.

[5] We assume that a number of factors other than the status of the appellate litigation, factors such as the health of the economy generally and that of the natural gas industry in particular, as well as the financial position of

If permission to revert to straight-line depreciation is granted—and, as noted above, we do not favor such action—the Commission should condition its order so as to protect Texas Gas' customers in the event the company continues to utilize liberalized depreciation for tax purposes. The obvious technique in this regard would be a requirement that Texas Gas credit its Account 282 reserve by an amount reflecting the difference between the taxes actually paid and

the taxes that would have been paid on the basis of straight-line depreciation.

Respectfully submitted,

WESTERN KENTUCKY GAS COMPANY
By CHARLES A. CASE, JR.
Charles A. Case, Jr.
Attorney for
Western Kentucky Gas Company

WILLIAM G. CRAIG
100 St. Ann Street
Owensboro, Kentucky 42301

CHARLES A. CASE, JR.
JOEL YOHALEM
Wolf & Case
1625 K Street, N.W.
Washington, D. C. 20006

Attorneys for Western Kentucky Gas Company

Dated: January 16, 1970

* * * * * * * * * *

Texas Gas, would all enter into the company's determination of an appropriate depreciation method. The examiner made clear his view that the company's inability to indicate how it would in fact pay its taxes was a matter to be dealt with in the briefs, and that inquiry into this matter was not a proper subject for cross-examination.

2575

Excerpt from Commission Staff Reply, Received February 6, 1970

X. The Tax Depreciation Issue Should Be Decided on the Basis of the Record in This Proceeding and Not on the Basis of the Newly Enacted Tax Reform Act of 1969

Texas Gas, in its initial brief, contends that the passage of the Tax Reform Act of 1969 has the effect of mooting in part the tax depreciation issue in this proceeding, in that the new tax act permits a regulated utility which is presently utilizing liberalized depreciation, and flowing through the benefits thereof to its customers in the form of reduced rates, to elect to switch to normalization or straight line depreciation on future property. Texas Gas takes the position that the Commission should permit it to switch to straight line depreciation on its existing plant, as it intends, under the 180 day option provision of the Act, to elect to go to normalization on its future plant, the effect of which, it says, will be to eliminate, as far as Texas Gas is concerned, the tax savings upon which the Commission's flow-through policy was originally based.

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It is the staff's position that the issue of whether Texas Gas should be allowed to revert from liberalized depreciation to straight line depreciation should be decided on the basis of the record in this proceeding and not on the basis of the provisions of the Tax Reform Act of 1969 nor on the election which Texas Gas says it intends to make thereunder in the future. The tax Act became law after close of the hearings in Phase I of this proceeding. There is therefore nothing in the record with respect to the provisions of this new law. A review of Section 441 of the Act, dealing with depreciation allowed regulated industries, shows that the provisions contained therein are complicated and complex and require further study and analysis.

Moreover, there have been no regulations or guidelines issued by the Internal Revenue Service with respect to the Act.

Under these circumstances Texas Gas is premature in asking the Commission to decide the tax depreciation issue on the basis of this newly enacted tax legislation. The company's request that the Commission make a finding in this proceeding as to the effect on its rates of an election it says it intends to make in the future to switch to a method of depreciation, other than liberalized, in effect, asks the Commission to make determinations

2577

involving first, an assumption that Texas Gas has already made the election in question and secondly, speculation as to the proper application of the provisions of the Act. Staff submits that the Commission cannot decide this depreciation issue on such an abstract basis.

The Commission cannot properly decide this issue on the basis of an action which Texas Gas may take in the future. Moreover, the election which Texas Gas says it intends to take would have application only to taxable years beginning after December 31, 1970. The pertinent provision of the Act is as follows:

"(4) SPECIAL RULES AS TO FLOW-THROUGH METHOD.—

"(A) ELECTION AS TO NEW PROPERTY REPRESENTING GROWTH IN CAPACITY.—If the taxpayer makes an election under this subparagraph within 180 days after the date of the enactment of this subparagraph in the manner prescribed by the Secretary or his delegate, in the case of taxable years beginning after December 31, 1970, paragraph (2)(C) shall not apply with respect to any post-1969 public utility property, to the extent that such property constitutes property which increases the productive or operational capacity of the taxpayer with respect to the goods or services described in paragraph (3)(A) and does not represent the replacement of existing capacity."

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For the foregoing reasons, staff submits that the tax depreciation issue in this proceeding should be decided on the basis of the record herein and not on the hypothetical basis proposed by Texas Gas involving application of the provisions of the Tax Reform Act of 1969.

On the basis of the record in this proceeding, we demonstrated in our initial brief that Texas Gas failed to show sufficient reasons why it should be permitted to revert from liberalized depreciation to straight line depreciation. Its rates should therefore continue to reflect the tax savings attributable to liberalized depreciation.

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2691

(Docketed May 4, 1970)

BEFORE THE

FEDERAL POWER COMMISSION

Docket No. RP69-41 (Phase I)

In the Matter of

TEXAS GAS TRANSMISSION CORPORATION

Motion for Expedited Decision on Limited Issue

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2692

Comes now Texas Gas Transmission Corporation (Texas Gas) and respectfully moves that the Commission expedite its decision with respect to the limited issue of tax depreciation, as it is presented in Phase I of this proceeding and, in connection therewith, to grant the Motion for Oral Argument heretofore made by Texas Gas insofar as it relates to that issue. In support thereof, Texas Gas states as follows:

I

On June 27, 1969, Texas Gas filed a general increase in rates subject to the jurisdiction of the Commission. The

increased rates were proposed to become effective on August 12, 1969. This rate increase included, as one of its cost components, the increased taxes associated with Texas Gas' proposed discontinuance of the use of liberalized depreciation and the reversion to a straight-line method of computing tax

2693

depreciation. The proposed increased rates were suspended until January 12, 1970.

The initial hearing was held on September 25, 1969, at which time the Presiding Examiner determined that the proceeding would be divided into two phases and that Phase I would concern itself with (1) rate of return and related taxes; and (2) whether Texas Gas, as a matter of principle, should be permitted to return to a straight-line method of computing tax depreciation. The hearings on the Phase I issues concluded on December 12, 1969. The Commission by notice issued December 23, 1969, omitted the intermediate decision. The briefing schedule has been completed and the Phase I issues are now ripe for Commission decision.

At the conclusion of the Phase I hearing, on December 12, 1969, and in conjunction with Staff Counsel's Motion to Omit the Intermediate Decision, counsel for Texas Gas requested oral argument before the Commission (Tr. 1074). This motion was concurred in by Memphis Light, Gas and Water Division (Memphis) (Tr. 1075-76) and by Western Kentucky Gas Company (Tr. 1075). No party opposed the motion.[1]

The Commission has not, as yet, acted upon Texas Gas' motion for oral argument with respect to Phase I issues in this proceeding.

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[1] While Staff Counsel did not oppose the Motion, he did state, in conjunction with his motion to omit the intermediate decision that he did not wish an opportunity to present oral argument (Tr. 1072).

2694

II

The Tax Reform Act of 1969 provides that a regulated taxpayer presently on flow-through, such as Texas Gas, has a right to elect, within 180 days after the enactment of the new act, to have the provisions which permit flow-through not apply with respect to post-1969 public utility property.[1] If the utility elects to utilize liberalized depreciation with normalization as to such property, permission of the appropriate regulatory agency must be obtained. However, the regulated taxpayer has an unqualified right to elect to use straight-line depreciation with respect to post-1969 public utility property without seeking permission of the regulatory agency.

As set forth in our Initial Brief (p. 77), Texas Gas proposes to exercise its election under the special 180-day rule and indicated its preference to utilize liberalized depreciation with normalization. Before making this election, however, Texas Gas needs assurance from the Commission that it will be permitted to discontinue the use of liberalized depreciation for rate-making purposes with respect to existing plant. This assurance

2695

is imperative because without it, the Company, if it exercised its option, would be confronted with a continual loss of tax depreciation deductions (approximately $1,100,000 annually Tr. 190) under the continued use of liberalized depreciation on existing property. The loss of tax depre-

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[1] Post-1969 public utility property is defined as ". . . any public utility property which is not pre-1970 public utility property." Pre-1970 public utility property is defined as ". . . property which was public utility property in the hands of any person at any time before January 1, 1970."

The special election applies only to post-1969 public utility property to the extent that such property constitutes property which increases the productive or operational capacity of the taxpayer and does not represent the replacement of existing capacity.

ciation deductions results in higher income taxes in the Company's cost of service which necessitates higher rates to recover such taxes. This is so since, once the option is exercised with respect to future property additions which increase capacity, such property would not be eligible for liberalized depreciation and flowthrough accounting and, therefore, could not provide an offset, to any degree, for the loss of tax depreciation on the existing properties.

III

Under the terms of the Tax Reform Act of 1969, the statutory election referred to above (Par. II) must be exercised on or before June 29, 1970.[1] It is essential, therefore, that the Commission issue its decision with respect to the tax depreciation issue in this proceeding prior to June 29, 1970. Otherwise, Texas Gas may be effectively deprived of the benefits which Congress intended it to have under the 180-day election.

In addition, oral argument is entirely appropriate since this is the first case in which a request has been presented to the Commission for permission to discontinue the use of liberalized depreciation for tax purposes.

WHEREFORE, for all of the foregoing reasons, Texas Gas respectfully requests that the Commission render its decision with respect to the tax depreciation issue in Phase I of this proceeding prior to June 29, 1970 and, in connection

[1] Under the provisions of Section 441 of the Act, the election must be made ". . . within 180 days after the date of enactment . . ." of the Act. The Act was approved December 30, 1969 at 9:30 a.m. and the 180th day thereafter falls on Sunday, June 28, 1970. See: *Union Nat'l Bank* v. *Lamb*, 337 U.S. 38, 69 S. Ct. 911 (1949). See also: 35 Fed. Reg. 84 (1970), p. 6871.

therewith, to schedule oral argument at the earliest practicable date prior thereto.

Respectfully submitted,

CHRISTOPHER T. BOLAND
Christopher T. Boland
Attorney for Texas Gas Transmission Corporation

Of Counsel:

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2720

(Docketed May 8, 1970)

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. RP69-41 (Phase I)

In the Matter of:
TEXAS GAS TRANSMISSION CORPORATION

Answer of the City of Hamilton, Ohio to Motion for Expedited Decision on Limited Issue

The City of Hamilton, Ohio (Hamilton), pursuant to § 1.12(c) of the Commission's Rules of Practice and Procedure, herewith answers the Motion of Texas Gas Trans-

mission Corporation (Texas Gas) for Expedited Decision on Limited Issue as follows:

I.

Texas Gas asks the Commission to expedite its decision with respect to the issue of tax depreciation in Phase I of this proceeding and, in connection therewith, to grant its earlier Motion for Oral Argument insofar as it relates to that issue.

2721

In support of its Motion, Texas Gas states that the Tax Reform Act of 1968 permits a regulated utility to make an election with respect to certain alternative depreciation methods for post-1969 utility property and that such election must be exercised on or before June 29, 1970. Texas Gas further states that such election is affected by the Commission's determination as to whether the Company will or will not be permitted to discontinue the use of liberalized depreciation for ratemaking purposes with respect to existing utility plant.

II.

When Congress enacted Section 441 of the Tax Reform Act of 1969, it expressed its intent that the trend toward change-over to the use of liberalized depreciation and flow-through accounting by public utilities be stopped since it results in a loss of tax revenues. Nevertheless, because of countervailing considerations spelled out in the House Report, Congress explicitly rejected the solution of requiring utilities to revert to straight-line depreciation, saying:

> Consideration has been given to suggestions by the Federal Power Commission and others that regulated utilities no longer be permitted to use a method of depreciation

other than straight line. However, your committee concluded that, in too many cases, this would place regulated utilities at an unfair competitive disadvantage, both in terms of the sale of their products or services and their attractiveness to equity investors. Also, *this would result in prompt, substantial, and widespread utility rate increases.*[1]

Having rejected the suggestion that utilities be required to revert to straight-line depreciation, the House Report reached the following conclusion:

> Accordingly, your committee has determined in general to "freeze" the current situation regarding methods of depreciation . . .[2]

Texas Gas, as well as a number of other pipeline companies, are urging the Commission to sanction a return to straight-line depreciation despite the explicitly stated intent of Congress to the contrary. The reversion by Texas Gas to straight-line depreciation would result in an immediate increased cost to the consumers of some $4.5 million annually.

2723

Such a reversion to straight-line depreciation by Texas Gas and other major pipeline companies would, indeed, "result in prompt, substantial, and widespread utility rate increases"[3] which Congress specifically sought to avoid by dictating a "freeze" on the depreciation methods currently employed by regulated utilities.

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[1] 2 U. S. Code Cong & Ad. News (1969), p. 1783. [Emphasis supplied.]

[2] *Ibid.*, p. 1783; see also Senate Report, *Ibid.*, pp. 2204-5 and Conference Report, *Ibid.*, p. 2427.

[3] The Commission already had pending before it, as of March 31, 1970, forty pipeline rate cases involving increases in excess of $370 million, a substantial portion of which relates to the tax depreciation issue.

Accordingly, Hamilton agrees that this issue, as it appears in this case, should be resolved without any further delay and would also concur in the request of Texas Gas that oral argument be heard regarding it. Moreover, Hamilton urges that no decision to change Texas Gas' tax depreciation method or the tax depreciation method of any other regulated natural gas company be made until after such argument has been heard.

Respectfully submitted,

THE CITY OF HAMILTON, OHIO
By: J. DAVID MANN, JR.
J. David Mann, Jr.
Its Attorney

Of Counsel:

MORGAN, LEWIS & BOCKIUS
Washington-Philadelphia-Harrisburg

May 8, 1970

2731

(Docketed May 25, 1970)

LAW OFFICES
GALLAGHER, CONNOR AND BOLAND
THE BOWEN BUILDING
WASHINGTON, D. C. 20005

May 22, 1970

Federal Power Commission
441 G Street, N.W.
Washington, D. C. 20426

Attention: Mr. Gordon M. Grant, Secretary

Re: Texas Gas Transmission Corporation,
Docket Nos. RP69-41, et al.

Gentlemen:

Reference is made to the Motion for Expedited Decision on Limited Issue filed by Texas Gas in Docket No. RP69-41

(Phase I) on May 4, 1970. A question has been raised by a customer-intervenor as to the meaning of the following statements set forth on page 3 thereof:

> "As set forth in our Initial Brief (p. 77), Texas Gas proposes to exercise its election under the special 180-day rule and indicated its preference to utilize liberalized depreciation with normalization. Before making this election, however, Texas Gas needs assurance from the Commission that it will be permitted to discontinue the use of liberalized depreciation for rate-making purposes with respect to existing plant."

This letter is being written in order to make it perfectly clear that Texas Gas proposes to use a normalized method of accounting with respect to pre-1970 public utility property if the Commission permits Texas Gas to use normalization for rate-making purposes. Alternatively, Texas Gas proposes to revert to a straight-line method of computing tax depreciation with respect to pre-1970 public utility property, if the Commission permits the associated taxes to be included in Texas Gas' cost of service. Of the two methods, Texas Gas prefers the normalization method.

Respectfully submitted,

CHRISTOPHER T. BOLAND
Attorney for
Texas Gas Transmission Corporation

CTB:rm

2732

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss.

CHRISTOPHER T. BOLAND, being first duly sworn, deposes and says that he is Attorney for Texas Gas Transmission Corporation; that he has read the foregoing letter; that he is familiar with the contents thereof; and that the statements contained therein are true and correct to the best of his knowledge, information and belief, and that he is authorized to file the same with the Federal Power Commission.

CHRISTOPHER T. BOLAND

SUBSCRIBED AND SWORN TO before me this 22d day of May, 1970.

THERESE M. TANGORA
Notary Public

My Commission expires:
December 31, 1970.

2733

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D. C., this 25th day of May, 1970.

/s/ CHRISTOPHER T. BOLAND
Christopher T. Boland

Of Counsel for
Texas Gas Transmission Corporation

2738

(Docketed June 3, 1970)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

TEXAS GAS TRANSMISSION CORPORATION

Docket Nos. RP69-41, RP70-14

Opinion No. 578

Opinion and Order Granting Permission To Use Liberalized Depreciation With Normalization for Accounting and Rate Purposes

Issued: June 3, 1970

DC-53

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2739

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

TEXAS GAS TRANSMISSION CORPORATION

Docket Nos. RP69-41, RP70-14

OPINION NO. 578

APPEARANCES

Christopher T. Boland, George Meiburger, Robert O. Koch, and *Steve H. Finch* for Texas Gas Transmission Corporation

Kern G. Beasley and *William H. Hendren* for City of Linton, Indiana, and the City of Jasonville, Indiana

William G. Craig, Charles A. Case, Jr., and *Joel Yohalem* for Western Kentucky Gas Company

O. Grant Bruton for Louisville Gas and Electric Company

J. Harry Mulhern, Edward S. Kirby, and *James R. Lacey* for Public Service Electric and Gas Company

William C. Hart, Giles D. H. Snyder, Ralf Mahaffey, and *John F. Sisson* for Ohio Fuel Gas Company and Columbia Gas of Ohio

Reuben Goldberg, Allan Freidson, and *George E. Morrow* for Memphis Light, Gas and Water Division

Richard M. Merriman, Peyton G. Bowman, III, and *J. Richard Tiano* for Arkansas-Missouri Power Company and Mississippi Valley Gas Company

August L. Griesedieck for Arkansas-Missouri Power Company

James L. Bomar, Jr., and *Jack M. Irion* for United Cities Gas Company

Eugene Ward for Tennessee Public Service Commission, State of Tennessee

Norman A. Flaningam, Charles R. Brown, Henry P. Sullivan, and *Thomas A. White* for Consolidated Gas Supply Corporation

2740

Paul L. Muilenburg, Marvin H. Morse, and *John Regan* for Administrator, General Services Administration

J. David Mann, Jr., and *John C. Mason* for The City of Hamilton, Ohio

Morton L. Simons and *Kent H. Brown* for Public Service Commission, State of New York

Paul J. Doppes for City of Cincinnati, Ohio

Richard H. Rhein and *Walter E. Beckjord* for The Cincinnati Gas and Electric Company and Lawrenceburg Gas Transmission Corporation

John H. Groves and *Jon D. Noland* for Indiana Gas Company, Inc., and Ohio River Pipeline Corporation

David W. Lanier and *M. Watkins Ewell, Sr.*, for City of Dyersburg, Tennessee

G. Griffin Boyte for City of Humboldt, Tennessee Board of Public Utility

Don S. Smith for Arkansas Public Service Commission

Richard N. George and *John L. Kennedy* for Rochester Gas and Electric Corporation

George O. Benton for Jackson Utility Division, City of Jackson, Tennessee

Jack D. Head and *Joseph F. Weiler* for Texas Eastern Transmission Corporation

Edwin H. Russell, Barbara M. Suchow, and *David C. Johns* for The Brooklyn Union Gas Company

James D. Nestroff for City of Toledo, Ohio

Gayle Malone for Gibson County Utility District, Trenton, Tennessee

Francis J. McShalley for the Staff of the Federal Power Commission

2741

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

ACCOUNT 282; LIBERALIZED DEPRECIATION; FLOW-THROUGH; ACCUMULATED DEFERRED TAXES; NORMALIZATION

Before Commissioners: John N. Nassikas, Chairman; Lawrence J. O'Connor, Jr., Carl E. Bagge, John A. Carver, Jr., and Albert B. Brooke, Jr.

TEXAS GAS TRANSMISSION CORPORATION

Docket Nos. RP69-41, RP70-14

OPINION NO. 578

OPINION AND ORDER GRANTING PERMISSION TO USE LIBERALIZED DEPRECIATION WITH NORMALIZATION FOR ACCOUNTING AND RATE PURPOSES

(Issued June 3, 1970)

NASSIKAS, Chairman:

1. The rate and accounting issues with respect to the property of Texas Gas Transmission Corporation on which liberalized depreciation is now being taken with flow-through of benefits are now before the Commission while other issues in this proceeding are subject to settlement negotiations. The proceedings commenced with the filing of a rate increase by Texas Gas on June 27, 1969, in Docket No. RP69-41, which was suspended until January 12, 1970; a further rate increase was filed on November 7, 1969, in Docket No. RP70-14 to track a rate increase filed by its supplier, United Gas Pipeline Company, and this was suspended until May 16, 1970.

2. At the hearing the proceeding was divided into two phases by the Presiding Examiner with Phase I comprising

questions of rate of return, associated income taxes, and reversion to straight-line depreciation. On motion of Staff Counsel the Commission omitted the intermediate decision with respect to Phase I issues, and briefs were filed by a number of parties. Lately settlement negotiations have been held among the parties and the Commission Staff with respect to both Phase I and Phase II issues, but the issues relating to liberalized depreciation have been left for determination by the Commission. On May 4, 1970, Texas Gas filed a motion for an expedited decision on the tax depreciation issue alleging that under

the Tax Reform Act of 1969, 83 Stat. 487, it would have to make an election with respect to certain "post-1969" property on or before June 29, 1970, and requesting oral argument. An answer to the motion was filed by the City of Hamilton, Ohio, contesting some of Texas Gas' arguments, agreeing that the case should be resolved without any further delay, and also asking for oral argument.

3. Texas Gas now employs liberalized depreciation under Section 167 of the Internal Revenue Code and flows through the benefits to its customers. It alleges that it did not make an election to utilize liberalized depreciation until the Commission had issued a declaratory order that it would permit companies subject to its jurisdiction to normalize taxes for both accounting and ratemaking purposes. *Amere Gas Utilities Co.*, 15 FPC 760 (1956). Under this normalization technique, Texas Gas computed its tax allowance for ratemaking purposes as though it were using stringht-line depreciation, but used liberalized depreciation for computing the amount of taxes actually paid. The difference between taxes collected through its rates and taxes actually paid was credited to Account 282, Accumulated Deferred Income Taxes—Liberalized Depreciation.

4. In *Alabama-Tennessee Natural Gas Company*, 31 FPC 908, 928 (1964), aff'd 359 F. 2d 318 (5th Cir. 1966), *cert. denied* 385 U.S. 847 (1966), we required that the tax benefits of liberalized depreciation be flowed-through to consumers. Texas Gas, for the reasons discussed below, now proposes to abandon flow-through for accounting and ratemaking purposes. For post-1969 property representing an expansion it proposes to effect this by an election under the Tax Reform Act and has shown a preference to utilize liberalized depreciation with normalization. For pre-1970 property, and presumably any other property not subject to the election, it now states by letter dated May 22, 1970, served on all the parties that:

> "This letter is being written in order to make it perfectly clear that Texas Gas proposes to use a normalized method of accounting with respect to pre-1970 public utility property if the Commission permits Texas Gas to use normalization for rate-making purposes. Alternatively, Texas Gas proposes to revert to a straight-line method of computing tax depreciation with respect

> to pre-1970 public utility property, if the Commission permits the associated taxes to be included in Texas Gas' cost of service. Of the two methods, Texas Gas prefers the normalization method."

5. The Tax Reform Act (Section 441 amending Section 167 of the Internal Revenue Code) divides utility property into pre-1970 property (that which was utility property in the hands of any person at any time before January 1, 1970) and post-1969 property (that which is not pre-1970 property). A taxpayer, like Texas Gas, using the flow-through method of accounting may with respect to post-1969 property elect to change to straight-line depreciation, or with our permission to the normalization method, to

the extent the property increases the productive or operational capacity of the taxpayer and does not represent the replacement of existing capacity. Contrary to some of the arguments expressed in the briefs, it is clear that Congress intended this election to apply for ratemaking purposes as well as tax purposes.

6. The Senate Report[1] states that where the election is made "the agency would not be able to impute the use of accelerated depreciation with flow-through"; and the House Report[2] states "the taxpayer will be permitted to elect straight line depreciation as to such new property and, if the taxpayer seeks to use accelerated depreciation, the regulatory agency will be permitted to in effect force the taxpayer to straight line depreciation by not permitting normalization. The regulatory agency will not, in such cases, be permitted to require flow through of deferred taxes." It is true, as the City of Hamilton points out, that the House Committee rejected the suggestion that utilities be required to revert to straight-line depreciation and stated that it intended to "freeze" the current situation regarding methods of depreciation in order to avoid putting the companies at a competitive disadvantage or inducing widespread rate increases, but this was the general

policy and a specific exception was made for an election with respect to post-1969 property where the companies wished to depart from the flow-through method.

7. Referring to these provisions of the Tax Reform Act in our Order No. 404, Statement of Policy, issued May 15, 1970, we determined that it was in the public interest, as to property as to which the election is made, "that electric and natural gas pipeline companies regulated by

[1] Senate Report No. 91-552 on H.R. 13270, pp. 173-174.

[2] House Report No. 91-413 on H.R. 13270, p. 133.

the Commission be permitted to employ a normalization method in their accounts and annual reports, as well as for ratemaking purposes," but we did not decide the ratemaking or accounting issues with respect to other property such as that constructed or acquired prior to January 1, 1970, on which flow-through is being used. Therefore in this proceeding if Texas Gas elects to abandon flow-through on post-1969 property, it is permitted to employ normalization for accounting and ratemaking purposes, but there still must be determined the question whether it may abandon flow-through and use liberalized depreciation with normalization for property not subject to the election, that is the pre-1970 property and the post-1969 property which does not represent an expansion. Under the Tax Reform Act our authority to determine whether a company may effect such a change is not diminished.[3]

8. In our opinion Texas Gas has shown good reason to abandon flow-through for accounting and ratemaking purposes. In *Alabama-Tennessee*, we based our conclusions on our finding that liberalized depreciation would exceed straight-line depreciation where the company continues to make capital additions. Even where the composite plant of a company remains stable, we found, annual liberalized depreciation would not be lower than straight-line depreciation. Thus we concluded that a regulated utility would never be required to pay higher income taxes because of its election to claim liberalized depreciation unless its gross plant declines in dollar value as a result of lower demand or lower plant construction costs. In support of this approach we noted that almost all responsible forecasts reflected the widespread belief that the gas pipeline

industry would continue to expand at least until 1980, and we concluded that the pattern of growth in demand and

[3] See House Report No. 91-413, U.S. Code Congressional and Administrative News, p. A-141.

plant capacity with respect to Alabama-Tennessee and the gas pipeline industry generally would continue for the reasonably foreseeable future. We followed the same approach in *Midwestern Gas Transmission Co.*, 36 FPC 61 (1961), aff'd 388 F. 2d 444 (7th Cir.), *cert. denied*, 392 U.S. 928 (1968). It should be observed that while we were upheld in requiring flow-through in both these cases, the court in neither case indicated that we are required to order that the companies use flow-through.

9. Under the present circumstances the considerations applicable in *Alabama-Tennessee* and *Midwestern* do not obtain. By reason of Texas Gas' proposed election under the Tax Reform Act and Order No. 404, depreciation on its facilities, constructed after the beginning of 1970 which increase its capacity, will be subject to normalization rather than flow-through. Therefore tax depreciation on such new facilities will not be available to offset the declining tax depreciation deductions on the older facilities as contemplated in the *Alabama-Tennessee* and *Midwestern* cases.

10. Excluding new expansion facilities from consideration, the continued use of liberalized depreciation on the pre-1970 plant will not create a tax saving. It is not an answer to urge that the allowable tax depreciation of the pipeline plant remaining after exclusion of the post-1969 expansion facilities will be sufficiently stable to avoid forever repayment of taxes earlier avoided by liberalized depreciation. This is because the permissible tax depreciation life of natural gas properties is much shorter than the physical life of such properties. In other words, the period of time over which the properties would be useful and depreciable for tax purposes is dependent on the gas supply rather than the useful physical life of the plant. It therefore follows that the pre-1970 tax plant will not be a stable plant in the sense that plant retirements are replaced by new facilities, but the basis of tax depreciation related thereto will decline, so that there is

little chance with respect to this plant that there will be any permanent tax savings. Under these circumstances, therefore, Texas Gas is correct in contending that normalization in computing the tax allowance for rate purposes with respect to its pre-1970 facilities offers more hope for stability of rates for its customers and more assurance that the company can earn its

2746

fair rate of return without future rate increases. Further benefits of normalization are that it will improve the company's before tax coverage of interest, thereby enhancing the quality of its securities, and that it will help alleviate present day cash shortages.

11. While, of course, Texas Gas is subject to regulation and is required to operate with all reasonable economies,[4] here it would appear that a reversion to normalization with respect to the pre-1970 properties (and post-1969 properties not subject to the election) would lead to more stable tax costs in the long run as far as its customers are concerned. It is likely that tax costs under the flow-through method, while lower at this time than they would be under normalization, could increase in the future, putting financial pressure on the company and creating the need for increased rates. Under these conditions, the company's management is in the best position to examine and pass judgment on these effects, and we are prepared to respect the exercise of managerial discretion at least to the extent of permitting Texas Gas to adopt liberalized depreciation with normalization. Furthermore, upon re-examination of the basis of our *Alabama-Tennessee* and *Midwestern* decisions in the light of the Tax Reform Act of 1969, particularly its effect on post-1969 property, and the impact of the tax law on pipeline property, the findings made in those two cases are no longer applicable, and

[4] See *El Paso Natural Gas Co.* v. *F.P.C.*, 281 F. 2d 567 (5th Cir. 1960), cert. denied, 366 U.S. 912 (1961).

accordingly the cases are overruled to the extent they are inconsistent with this decision.

12. In reply to the arguments and evidence of Texas Gas on the effect of continuing liberalized depreciation and flow-through, Memphis presents an exhibit which purports to show that even if gross plant leveled off and then declined the use of liberalized depreciation would not require a rate increase, because the decline in return and related income tax would more than counterbalance any increase in tax resulting from lower deductions under liberalized depreciation. With comparable result, the Staff assumes an initial investment with no additions or retirements and shows that in the early years that the property is in service, as tax deductions decline, the advantage to consumers of using liberalized depreciation with flow-through declines until it becomes negative, but this tendency is offset by a tax reduction due to the decline in the rate base. In our opinion, the effect of the declining rate base should not be

2747

used to offset the effects of liberalized depreciation with flow-through. Where there is no new investment the rate base declines in any case, regardless of the method of tax depreciation. While Texas Gas' pre-1970 properties may represent a declining net investment, the company will undoubtedly be adding to its entire rate base by post-1969 construction, and its operating expenses may well be increasing. Therefore, if Texas Gas remains on flow-through it appears that it may be benefitting present consumers at the unwarranted expense of future consumers. On the other hand, there appears to be little possibility that if Texas Gas chooses to use normalization on its pre-1970 property it will be providing for decreased rates to consumers in later years at the expense of present consumers.

13. To conclude, we shall grant approval to Texas Gas to exercise its discretion to abandon flow-through with

respect to the pre-1970 property and post-1969 non-expansion property and to adopt liberalized depreciation with normalization with respect to this property. Texas Gas, through its election under the Tax Reform Act, already has permission to use liberalized depreciation with normalization with respect to its post-1969 expansion property. Balances in Account 282 should continue to be deducted from the rate base in computing cost of service for ratemaking purposes.

14. Because the issues have been well covered in the briefs we do not think that oral argument is necessary.

The Commission orders:

(A) In the computation of its Federal Income Tax allowance for ratemaking purposes as well as for accounting purposes, Texas Gas is permitted to use liberalized depreciation with normalization with respect to its property other than that subject to election under Section 167(1)(4)(A) of the Internal Revenue Code as amended by Section 441 of the Tax Reform Act of 1969. Such election applies to property constructed or acquired on or after January 1, 1970, to the extent it increases the productive or operational capacity of the company and does not represent the replacement of existing capacity. Texas Gas may reflect any such change in its rates, as well as any change in costs arising from its proposed election. In computing its cost of service for ratemaking purposes balances in Account 282 should continue to be deducted from the rate base.

2748

(B) Oral argument is denied.

By the Commission.

(SEAL)

GORDON M. GRANT,
Secretary.

2749

(Docketed June 12, 1970)

BEFORE THE

FEDERAL POWER COMMISSION

In the Matter of

Texas Gas Transmission Corporation

Docket Nos. RP69-41, RP70-14

Motion of Texas Gas Transmission Corporation for Approval of Settlement

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2750

Comes now Texas Gas Transmission Corporation (Texas Gas) and pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure submits herewith the attached Stipulation and Agreement in full settlement and disposition of all issues involved in the presently pending proceedings in the above-entitled dockets except tax depreciation. As to the latter, the Stipulation and Agreement states that no provision thereof shall ". . . prejudice the rights which any party may have with respect to the Commission's Opinion No. 578 and Accompanying Order issued on June 3, 1970 relating to tax depreciation in the instant proceeding."

It is requested that the Commission approve the enclosed Stipulation and Agreement and grant such waivers and special permissions with respect to the requirements of the Commission's regulations to the extent

2751

necessary to effectuate all of the provisions of the aforesaid Stipulation and Agreement.

It is to be noted that Texas Gas, pursuant to its FPC Gas Tariff, will submit its billings for the month of June 1970 by July 10, 1970. It is, therefore, requested that the

Commission approve the enclosed Stipulation and Agreement not later than July 10, 1970 so that the reduced rates provided for in Appendix B thereof can be applied to the billings for the month of June, 1970.

Copies of this Motion and the attached Stipulation and Agreement have been served upon all of the parties to the proceedings in Docket Nos. RP69-41 and RP70-14; all of Texas Gas' jurisidictional customers; and, all interested State Commissions.

WHEREFORE, Texas Gas Transmission Corporation respectfully requests that the Commission approve the attached Stipulation and Agreement, as submitted herewith, at its earliest convenience.

Respectfully submitted,

/s/ CHRISTOPHER T. BOLAND
Christopher T. Boland
Attorney for
Texas Gas Transmission Corporation

2752

DISTRICT OF COLUMBIA }
CITY OF WASHINGTON } ss.

CHRISTOPHER T. BOLAND, being first duly sworn, deposes and says that he is Attorney for Texas Gas Transmission Corporation; that as such he is authorized to sign and verify the foregoing Motion on behalf of Texas Gas Transmission Corporation; and that the matters and things set forth therein are true and correct to the best of his information, knowledge and belief.

CHRISTOPHER T. BOLAND

SUBSCRIBED AND SWORN to before me this 12th day of June, 1970.

THERESE M. TANGORA
Notary Public

My Commission expires: 12-1-70.

2754

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

TEXAS GAS TRANSMISSION CORPORATION

Docket Nos. RP69-41, RP70-14

Stipulation and Agreement

Filed: June 12, 1970

2757

Texas Gas proposes to reserve for Commission decision the tax depreciation issue referred to above. The $227,505,967 includes $4,400,000 which is related to this issue. Article II sets forth the manner in which the rates of Texas Gas shall be reduced should the Company be required to continue to use liberalized depreciation with flow-through.

2759

ARTICLE II

RESERVED ISSUE—TAX DEPRECIATION

This Stipulation and Agreement disposes of all issues with the exception of the appropriate tax depreciation deduction to be reflected in the computation of Texas Gas' income tax allowance to be included in its cost of service. As heretofore indicated, this issue has been specifically reserved for decision by the Commission.

A. *Rate Reductions*

If, as a result of the Commission's decision and order with respect to the tax depreciation issue, Texas Gas is required to continue to use liberalized

2760

depreciation with flow-through, the jurisdictional rates of Texas Gas shall be reduced by $4,400,000 on an annual basis. In such event, within ten (10) days after the date upon which the Commission's order becomes final and non-appealable, Texas Gas shall file revised tariff sheets, acceptable to the Commission, which reduce the then effective jurisdictional rates of Texas Gas by the unit reductions set forth in Appendix C hereof.

B. *Refunds.*

In the event that Texas Gas is required to make a rate reduction pursuant to Paragraph A of this Article, then Texas Gas shall, concurrently therewith, refund to its jurisdictional customers the amounts determined by multiplying the applicable unit reductions set forth in Appendix C by the actual billing demands and Mcf deliveries of gas purchased by such customers during the period January 12, 1970 to the date upon which Texas Gas shall first begin to charge the reduced rates derived from the unit reductions set forth in Appendix C hereof.

Refunds made pursuant to this paragraph which are applicable to gas sold and transported during the period January 12, 1970 through May 15, 1970 shall include interest at the rate of 8.5%, annually, as provided in Ordering Paragraph (C) of the Commission's order issued January 29, 1970 in Docket No. RP69-41, subject to the Commission's action on Texas Gas' Petition for Modification of that order filed on May 4, 1970. Refunds made

2761

pursuant to this paragraph which are applicable to gas sold and transported during the period from May 16, 1970, to the date upon which Texas Gas shall first begin to charge the rates derived from the unit reductions set forth in Appendix C hereof, shall include interest at the rate of

8%, annually, as provided in Ordering Paragraph (C) of the Commission's order issued May 15, 1970 in Docket No. RP70-14.

Article III

Tracking Increases and Decreases

While the rates provided for in this Stipulation and Agreement are in effect, Texas Gas may from time to time until November 1, 1971, increase the rates in its FPC Gas Tariff, Second Revised Volume No. 1, to reflect supplier rate increases and shall decrease its rates to reflect supplier rate reductions in accordance with the provisions of this Article.

The reduced rates provided in Appendix B hereof are based on a weighted average cost of gas at 15.025 psia of 21.51¢ per Mcf. If any gas supplier increases or decreases its rates above or below those in effect on May 16, 1970, and a rate increase is permitted or a rate decrease is required hereunder, Texas Gas will file with the Commission, and serve on its customers, a report, acceptable to the Commission, setting forth the computations made in accordance with the following procedure.

2773

APPENDIX C

TEXAS GAS TRANSMISSION CORPORATION

APPORTIONMENT TO RATE ZONES OF THE COST OF SERVICE EFFECT OF TAX DEPRECIATION

	Revenue Increase	Percent of Total	Cost of Service Effect of Tax Depreciation
Zone 1	$ 5,000,000	19.87%	$ 874,280
Zone 2	587,000	2.33	102,520
Zone 3	4,810,000	19.12	841,280
Zone 4	14,615,000	58.10	2,556,400
Transportation	145,000	0.58	25,520
Total	$25,157,000	100.00%	$4,400,000

UNIT RATE CHANGES RESULTING FROM THE COST OF SERVICE EFFECT OF TAX DEPRECIATION

	Zone 1	Zone 2	Zone 3	Zone 4
Sales Rates				
CD, CDL and G				
Demand	$0.12	$0.08	$0.08	$0.09
Commodity	0.09¢	0.17¢	0.30¢	0.35¢
Allowable Variation	0.39¢	0.27¢	0.26¢	0.29¢
SG				
Base load	0.67¢	0.67¢	0.67¢	0.67¢
Excess	0.67¢	0.67¢	0.67¢	0.67¢
I, EM and XS	0.48¢	0.44¢	0.56¢	0.64¢
ACQ			0.56¢	
Transportation Rates				
X-21				
Demand				$0.04
Commodity				0.14¢

2783

(Docketed June 29, 1970)

UNITED STATES OF AMERICA

BEFORE THE FEDERAL POWER COMMISSION

Docket Nos. RP69-41, RP70-14

TEXAS GAS TRANSMISSION CORPORATION

Application for Rehearing

Comes now the Memphis Light, Gas & Water Division, an intervenor in the above docket, pursuant to § 1.35 of the Commission's Rules of Practice and Procedure and Section 19(a) of the Natural Gas Act, 15 USC § 717r, and, being aggrieved as a customer of Texas Gas Transmission Corporation by Opinion No. 578 and accompanying Order in the above Docket, petitions for rehearing of said Opinion and Order on the following grounds:

1. The Commission erred in permitting Texas Gas Transmission Corporation to use for accounting and ratemaking purposes liberalized depreciation with normalization (1) with respect to its property other than that subject to election under Section 167(1)(4)(A) of the Internal Revenue Code, as amended by Section 441 of the Tax Reform Act of 1969, and (2) with respect to its property subject to such election.

2. The Commission erred in finding that the factual considerations and conditions which led to its decisions in *Alabama-Tennessee Natural Gas Company*, 31 FPC 208, 928 (1964), aff'd 359 F2d 318 (CA 5 1966), cert.

denied 385 US 847 and in *Midwestern Gas Transmission Co.*, 36 FPC 61 (1961), aff'd 388 F2d 444 (CA 7), cert. denied 392 US 928, do not obtain in this case with respect to Texas Gas. There is no evidence to support such findings.

3. The Commission erred in finding that tax depreciation on the "new" facilities of Texas Gas, i.e. those constructed after December 3, 1969, will not be available to offset the declining tax depreciation deductions on its older facilities, there being no evidence to support such a finding.

4. In concluding that the continued use of liberalized depreciation on Texas Gas' pre-1970 plant will not create a tax savings, the Commission erred in excluding the effect of liberalized depreciation on new expansion facilities in reaching that conclusion. The tax effect relates to the company as a whole, and cannot factually or legally be compartmentalized between different categories of utility plant.

5. Assuming that the tax effect of liberalized depreciation could be compartmentalized so as to relate separately to the pre-1970 and the post-1969 facilities, nevertheless the Commission erred in finding

(a) that the permissible tax depreciation life of natural gas properties is much shorter than the physical life of such properties—there being no evidence in the record to support such a finding as to pipe lines

in general or Texas Gas in particular;

(b) that the depreciable life of pipe line properties for tax purposes is dependent on the gas supply rather than the useful physical life of the plant, there being no evidence in the record to support such a finding as to pipe lines in general or Texas Gas in particular.

(c) that the pre-1970 "tax plant" of Texas Gas will not be a stable plant in the sense that plant retirements are replaced by new facilities, but that the tax depreciation related thereto will decline; there being no evidence in the record that pre-1970 plant will decline in amount, or that

any decline in plant would not be offset, for tax depreciation purposes, by the higher cost of replacement plant.

6. The Commission erred in basing its conclusion wholly or partly upon the consideration that use of accelerated depreciation with normalization offers more hope for stability of rates than does the use of flow-through, because, even if this were true, it is unreasonable to purchase a "hope" of future increased stability at a cost of $4,400,000.00 per year, or more, of certain, immediate increase in rates.

7. The Commission erred in finding that the use of accelerated depreciation with normalization will enhance the quality of Texas Gas' securities, there being no evidence in the record to support such finding.

8. The Commission erred in finding that normalization with respect to pre-1970 properties and post-1969 properties not subject to the

election provision of the 1969 Tax Reform Act would lead to more stable tax costs in the future, and that tax costs under the flow-through method are likely to increase in the future, there being no evidence to support either such finding. The only evidence concerning increased tax costs was the company witness's contention that a continuation of flow-through of accelerated depreciation benefits could result in a $4,800,000.00 rate increase in 1978, when depreciation ran out on the company's pre-1954 properties. But even the company witness did not contend that avoidance of a problematical $4,800,000.00 increase in 1978 warranted an immediate increase of $4,400,000.00 or more per year in tax costs passed on to Texas Gas' customers.

9. The Commission erred in substituting the judgment of the company's management for its own appraisal of the effects of the tax treatment allowed to the company.

10. The Commission erred in finding that its findings in its *Alabama-Tennessee* and *Midwestern* decisions are no longer applicable. There is no evidence in this record of a change in general conditions, or in conditions relative to Texas Gas, which would render inapplicable the factual bases upon which those two cases were decided.

11. The Commission erred in finding that if Texas Gas remains on flow-through it may be benefiting present customers at the unwarranted.

expense of future customers. There is no evidence in the record to support such a finding. The *Alabama-Tennessee* and *Midwestern* decisions demonstrated that such eventuality could not happen so long as the company's plant continued to expand, or even if it remained stable. There is no evidence, nor even a claim, that Texas Gas' plant will cease to expand, or will begin to decrease, in the foreseeable future.

12. The Commission erred in granting Texas Gas permission to normalize its tax depreciation, when no request had been made by Texas Gas for such treatment (except for an *ex parte* letter of May 22, 1970, submitted long after the record had been closed on the tax depreciation issue), the issue had not been raised during the hearings, no evidence had been submitted on the issue, and no brief or argument had been submitted on the issue by any party, and no party had been informed that the issue was in any way involved in the case. Such action by the Commission constitutes an abuse of discretion and a denial to the parties of due process of law.

13. The Commission erred in allowing Texas Gas to treat actual tax savings to which it is entitled differently from other savings in any other cost of service, and in failing to require Texas Gas to operate with all reasonable economies, including tax savings.

14. The Commission erred in construing the Tax Reform Act of 1969 as requiring that the election as to post-1969 property apply for rate-making purposes as well as tax purposes, so as to force the Commission to allow for rate-making purposes a change from accelerated depreciation with flow-through to some other form of depreciation.

15. The Commission erred in construing the Tax Reform Act of 1969 as permitting or requiring it to allow use of accelerated depreciation with normalization for either pre-1970 facilities or post-1969 properties of Texas Gas.

WHEREFORE, Applicant prays that the Commission grant rehearing of its Opinion No. 578 and accompanying Order, and upon such rehearing the Opinion and Order be vacated, and that Texas Gas be required to continue to use accelerated depreciation with flow-through, and that its rates be fixed accordingly.

Respectfully submitted,

MEMPHIS LIGHT, GAS AND
WATER DIVISION

By GEORGE E. MORROW
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Its Attorney

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2799

(Docketed June 30, 1970)

BEFORE THE
FEDERAL POWER COMMISSION

Docket Nos. RP69-41, RP70-14

TEXAS GAS TRANSMISSION CORP.

Answer of New York Commission to Motion for Approval of Settlement

Pursuant to the Commission's notice of June 15, 1970, the Public Service Commission of the State of New York opposes the motion for approval of settlement offer filed herein by Texas Gas Transmission Corporation on June 12, 1970.

In these dockets, Texas Gas is seeking an annual increase in its jurisdictional rates of some $32.0 million. This increase is based, *inter alia*, upon a requested rate of return of 8.5%, and upon a claim for the higher federal income taxes that would result if Texas Gas were permitted to utilize straight-line depreciation in lieu of the accelerated depreciation it has previously used.

Upon motion of staff counsel, concurred in by all parties, the Commission, in December 1969, waived the examiner's decision on the return and tax-depreciation issues. Thereafter, on June 3, 1970, the Commission issued an opinion on the tax-depreciation issue only (Opinion No. 578). In that opinion, the Commission permitted Texas Gas to continue to utilize liberalized depreciation for tax purposes but authorized the company to include in its cost of service the fictitious higher income taxes it would pay if it used straight-line depreciation. Whether this difference—

2800

stipulated in the pending offer of settlement to be $4.4 million per year—is termed a fictitious expense or merely a

deferred expense, there is no doubt that it is not a current item of expense, and that it bears many of the attributes of return. Indeed, the Commission advanced, as a reason for allowing this fictitious or deferred item, its return-like qualities (Op. 578, mimeo. p. 6):

> "it will improve the company's before tax coverage of interest, thereby enhancing the quality of its securities, and . . . it will help alleviate present day cash shortages."

Based on Texas Gas' current test-year data, the effect of the $4.4 million "normalization" allowance on interest coverage and cash balance is the same as an additional 0.6% return.

The settlement offer whose approval Texas Gas now seeks—and it may be noted that the offer would grant Texas Gas $25.2 million of the $32.0 million it had requested—is apparently predicated on a rate of return allowance of 8%, a full 0.5% higher than the highest rate of return ever allowed by this Commission for any natural gas pipeline, see *Algonquin Gas Transmission Co.*, Op. 571, 43 FPC — (Jan. 19, 1970); and cf. *Florida Gas Transmission Co.*, Op. 561, 42 FPC 74 at 91 (1969). Moreover, neither *Algonquin* nor any prior opinion allowed the inclusion of the return-like "deferred tax" expense, so that, on a return-and-actual-expenses basis, the pending settlement offer is 1.1% in excess of the prior high, rather than merely 0.5%. On Texas Gas' rate base, this 1.1% excess amounts to $8.1 million, or approximately 32% of the $25.2 million increase

that would be allowed if the pending settlement offer were approved.

Under these circumstances, we respectfully suggest that the Commission cannot, consistent with its responsibilities

under the Natural Gas Act, approve the settlement as submitted.

Respectfully submitted,

PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK

By KENT H. BROWN, Counsel
Kent H. Brown, Counsel
44 Holland Avenue
Albany, New York 12208

MORTON L. SIMONS
1819 H Street, N.W.
Washington, D. C. 20006
June 30, 1970

2803

(Docketed July 2, 1970)

BEFORE THE
FEDERAL POWER COMMISSION

Docket Nos. RP69-41, RP70-14

Texas Gas Transmission Corp.

Application of New York Commission for Rehearing and Reconsideration

Pursuant to the provisions of Section 19(a) of the Natural Gas Act, the Public Service Commission of the State of New York hereby applies for rehearing and reconsideration of Opinion No. 578, issued herein on June 3, 1970. In that opinion, the Commission authorized Texas Gas Transmission Corporation to utilize, for rate purposes, liberalized tax depreciation with "normalization" in lieu of the present flow-through. Wholly aside from the legal errors detailed below, we respectfully suggest that, as a matter of policy, the decision is patently unwise in that it needlessly encourages an industry-wide inflation of pipe-

line rates, and we urge the Commission to reconsider its action in light of these consequences.

Procedural Errors Underlying Opinion No. 578

The Commission committed two major procedural errors in its June 3 opinion. First, it failed to decide the depreciation issue before it, deciding instead a quite different issue, and one that had never been properly presented to it. Under the Texas Gas filing, under the evidence presented, and under the motion to sever Phase I issues, the sole depreciation issue was whether Texas Gas should be granted permission

2804

to abandon liberalized depreciation with flow-through in order to change to straight-line depreciation for tax purposes. In its opinion, however, the Commission authorized Texas Gas to adopt liberalized depreciation with normalization. With all respect, we submit that this issue was not properly before the Commission and that its consideration by the Commission deprived the parties of due process of law.

Second, what had been severed for decision by the Commission in Phase I of this proceeding were *both* the tax depreciation issue and the rate of return allowance. The interrelationship of these two issues was, in fact, explicitly recognized—although the logical results flowing from that interrelationship were not—by the Commission at page 6 of its opinion, where it noted that the normalization treatment it had permitted

> "will improve the company's before tax coverage of interest, thereby enhancing the quality of its securities, and . . . it will help alleviate present day cash shortages."

In light of this interrelationship, we do not believe that the Commission was free to decide one of the Phase I is-

sues without also weighing its effect on, and deciding, the other.

The Basic Error of Opinion No. 578

The precise rationale underlying the decision reached by the Commission in Opinion No. 578 does not shine forth with the utmost clarity. It appears, however, that the decision rests on two principal bases: (1) that inasmuch as Texas Gas will use liberalized depreciation with normalization for its post-1969 non-expansion properties, "there is little chance . . . that there will be any permanent tax savings" resulting

2805

from the use of liberalized depreciation with respect to existing (pre-1970) properties; and (2) that the Commission should "respect the exercise of [the pipeline's] managerial discretion" to utilize liberalized depreciation with normalization. The first reason is not supported by the evidence of record but is in fact contrary to such evidence. The second reason is not a valid reason for Commission action under the Natural Gas Act, as a matter of law. Furthermore, although the Commission correctly states (mimeo. pp. 3-4) that it was "the general policy" of Congress in enacting Section 441 of the Tax Reform Act of 1969 "to 'freeze' the current situation regarding methods of depreciation in order to avoid . . . induring widespread rate increases," it is self-evident that the general policy adopted by the Commission in Opinion No. 578 is the precise opposite of that which the Commission ascribes to the Congress; yet there is not a word in the Commission's opinion which even attempts to reconcile this glaring inconsistency.

It is, of course, absolutely clear that there is nothing in the language of Section 441 which directs the Federal Power Commission or any other regulatory agency to adopt or endorse any particular rate treatment with re-

spect to either new or existing property. But even if there were some ambiguity in the statute on this point—and obscurity is by no means the same as ambiguity—reference to the legislative history would preclude the result reached by the Commission in Opinion No. 578. While the particular provision under discussion was merely one small

2806

part of a much larger comprehensive tax reform act and perhaps as a consequence received only limited Congressional attention, the Conference Report on the bill does provide guidance. After noting that the purpose of Section 441 was to prevent a regulated utility from choosing accelerated depreciation for tax purposes "unless it 'normalizes' the current income tax reduction resulting from the use of such accelerated depreciation," the Report then specifically states:

> "This rule is not to apply in the case of a taxpayer that is at present flowing through the tax reduction to earnings for purposes of computing its allowable expenses on its regulated books of account."

Yet, the Commission in Opinion No. 578, in direct contravention of the explicit intent expressed in the Conference Report, would apply the rule to pipelines presently flowing through the tax reductions.

It cannot seriously be argued that Section 441 of the Tax Reform Act modifies or was intended to modify the long-established regulatory rule that a utility must operate with all reasonable economies and that only prudent expenditures will be recognized for rate-making purposes. Accordingly, since there is no evidentiary basis in this record for finding that use of liberalized depreciation by Texas Gas will result merely in a tax deferral rather than a tax saving, there is no rational reason for the Commission to permit Texas Gas to inflate its gas rates to reflect a wholly fictitious tax.

2807

WHEREFORE, the Public Service Commission of the State of New York respectfully requests the Commission to grant rehearing and reconsideration of Opinion No. 578 and, upon such reconsideration, to rescind said opinion and deny Texas Gas Transmission Corporation permission to withhold from its customers the savings accruing from the use of accelerated tax depreciation.

Respectfully submitted,

PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK

By KENT. H. BROWN
Kent H. Brown, Counsel
44 Holland Avenue
Albany, New York 12208

MORTON L. SIMONS
1819 H Street, N.W.
Washington, D. C. 20006

July 1, 1970

2808

VERIFICATION

District of Columbia) ss:

MORTON L. SIMONS, being duly sworn, deposes and says that he is an attorney for the Public Service Commission of the State of New York, that he has prepared and is authorized to execute and file the foregoing application, and that the facts alleged therein are true and correct to the best of his knowledge, information, and belief.

MORTON L. SIMONS

Sworn to and subscribed before me this 2nd day of July, 1970.

/s/ MAY DRILL METCALFE

My Commission Expires Feb. 15, 1971.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of § 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D.C., this 2nd day of July, 1970.

MORTON L. SIMONS
Morton L. Simons

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BEFORE THE
FEDERAL POWER COMMISSION

Docket Nos. RP69-14 and RP70-14

In the Matter of
TEXAS GAS TRANSMISSION CORPORATION

Response of Texas Gas Transmission Corporation to Answer of the New York Commission

Comes now Texas Gas Transmission Corporation (Texas Gas) and files its response to the Answer of the New York Commission filed on June 30, 1970 in the above-entitled proceedings as follows:

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II

The New York Commission contends that, as a result of the Commission's Opinion No. 578 and accompanying order issued on June 3, 1970 in the instant proceedings, Texas Gas will be permitted to continue to utilize liberalized depreciation for tax purposes and to normalize for accounting and rate purposes. This is accurate.

The New York Commission further contends, however, that the $4,400,000 which has been stipulated as the amount

involved in the tax depreciation issue represents an allowance of ". . . an additional 0.6% return."[1] We categorically deny that normalization will provide Texas Gas with 0.6% of additional return or, in fact, any return whatever.[2]

Under normalization accounting, the difference in taxes on income which are payable because of the use of liberalized depreciation in computing such taxes, as compared to the taxes payable using the depreciation deduction otherwise appropriate and allowable for tax purposes, is

2829

credited to Account No. 282 of the Uniform System of Accounts entitled "Accumulated Deferred Income Taxes —Liberalized Depreciation" and the same amount is debited to Account No. 410 entitled "Provision for Deferred Income Taxes." Account No. 282 is a reserve for deferred taxes. The utility is restricted in its use of this account. For example, it cannot transfer the balance in the account, or any portion thereof, to surplus or make any use thereof except as specifically provided in the text of the account without prior approval of the Commission. Obviously, this reserve cannot be used for the payment of dividends or distributed, in any form, to the stockholders. Unlike return, it is not available to the investors. It is a reserve for deferred taxes and specifically restricted for such purposes.

The contra entry, as stated above, is a debit to Account No. 410 which, in accordance with accounting practices pre-

[1] In this connection, it is to be noted that the New York Commission and Memphis Light, Gas and Water Division have filed Applications for Rehearing of the Commission's Opinion No. 578 and accompanying order issued on June 1, 1970 in the instant proceeding, alleging that the Commission has improperly and erroneously permitted Texas Gas to use liberalized depreciation with normalization for accounting and rate-making purposes.

[2] The derivation of the 0.6% has not been shown or explained.

scribed both by the Commission and the Accounting Principles Board, is treated as any other expense. Thus, it is deducted from income to determine Net Operating Revenues (return) and Net Income so that the deferred tax amount is likewise not available for interest or dividend payments or for distribution to stockholders.

In addition, the Commission, in its Opinion No. 578, *supra,* has provided, in Ordering Paragraph (A) thereof, that:

2830

> "In computing its cost of service for rate making purposes balances in Account 282 should continue to be deducted from the rate base."

Therefore, the Commission has made it perfectly clear that it does not intend to permit Texas Gas to earn any return on such balances. If the deferred taxes or the reserve really represented return to the stockholders, the Commission could not constitutionally enforce any of these restrictions. Thus, it cannot be argued, seriously, that the deferred tax account represents funds which have any of the "essential" or "fundamental" ingredients of return.

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2835

(Docketed July 6, 1970)

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket Nos. RP69-41 and RP70-14

In The Matter of:
Texas Gas Transmission Corporation

Petition of Philadelphia Gas Works Division of UGI Corporation for Rehearing

To THE FEDERAL POWER COMMISSION:

COMES NOW, the Philadelphia Gas Works Division of UGI Corporation, an intervenor in one of the above consolidated dockets, pursuant to Section 1.35 of the Commission's Rules of Practice and Procedure, and Section 19(a) of the Natural Gas Act, 15 USC § 717(r), and Petitions for Rehearing of the Commission's Opinion No. 578 in the above matter and specifies the following errors therein:

1. The Commission erred in relying upon the effect of the Tax Reform Act of 1969 as a basis for overruling the principles of flow-through of liberalized depreciation it established in *Alabama-Tennessee Natural Gas Co.*, 31 F.P.C. 208 (1964), *aff'd.* 359 F.2d 318 (5th Cir. 1966), *cert. denied* 385

2836

U.S. 847, and *Midwestern Gas Transmission Co.*, 36 F.P.C. 61 (1965), *aff'd.* 388 F. 2d 444 (7th Cir. 1968), *cert. denied* 392 U.S. 393 U.S. 928.

DISCUSSION

Both the House Report and the Senate Report on the Tax Reform Act of 1969 make clear that the change to be effected by the Act with regard to depreciation allowed

regulated industries is a "prospective' one only. U.S. Code Cong. & Adm. News (1969), p. 1783, p. 2204-05. It is "prospective" in the sense that only property which is acquired after January 1, 1970 and which expands capacity is required to be normalized where the utility chooses to use liberalized depreciation. As to pre-1970 property and post-1969 property which does not expand capacity, both Reports declare the intent of Congress to "freeze" the existing situation regarding methods of depreciation.

Summarizing the intention of Congress as to existing property of utilities, the House Report states:

> "3. If the taxpayer is taking accelerated depreciation and flowing through to its customers the proceeds of the deferred taxes, then the taxpayer must continue to do so, unless the appropriate regulatory agency permits a change as to that property."

In the light of the foregoing legislative history, the Commission was faced in the present case with a narrow threshhold legal question: Does the paragraph quoted above indicate an intent that the Tax Reform Act confer some additional power or mandate on the Commission to permit normalization, or is it merely a "savings" clause, which retains for the Commission its already existing regulatory powers? The Commission decided this threshhold question wrongly. It is clear, in the light of the express intent of Congress to "freeze" the situation as to existing property, that the paragraph quoted above confers no additional power on the Commission to permit an abandonment of flow through in the absence of a justifying change in factual circumstances unrelated to the effect of the Tax Reform Act itself.

In direct conflict with this legislative intent, the Commission specifically relied on the effect of the Tax Reform

Act to justify overruling earlier policy in the absence of a change in facts:

> "Furthermore, upon re-examination of the basis of our *Alabama-Tennessee* and *Midwestern* decisions in the light of the Tax Reform Act of 1969, particularly its effect on post-1969 property, and the impact of the tax law on pipeline property, the findings made in those two cases are no longer
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> **2838**
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> applicable, and accordingly the cases are overruled to the extent they are onconsistent with this decision." Slip Opinion p. 6.

For all practical purposes, the Commission has ruled that the *inevitable* effect of the Tax Reform Act's rule as to depreciation on *post-1969 property* is to require normalization on all *pre-1970 property.* Such a result flies directly in the face of—indeed overrules—the Congressional intent to "freeze" the depreciation status of existing pipeline property.

2. To the extent that the Commission purports to rest its decision in Opinion 578 that the policy and rules of *Alabama-Tennessee, supra,* and *Midwestern, supra,* no longer obtain and must be overruled upon considerations other than the mere fact of the existence of the Tax Reform Act and its effect, such a conclusion is wholly without support in the present record.

DISCUSSION

As noted in Paragraph 1, the Committee Reports of the House and Senate make clear that the Commission may permit a change in depreciation method for existing property only to the extent that it legally could have done so in the absence of the Tax Reform Act of 1969. In the absence of the

2839

Tax Reform Act an overruling of the *Alabama-Tennessee* and *Midwestern* decisions, such as the Commission has made, would have to be postulated upon a finding of a change in factual circumstances which required a change in the policy of those cases, since no one disputes that natural gas companies are "required to operate with all reasonable economies." Slip Opinion P.6. The present record contains no evidence whatsoever supporting a finding that circumstances have changed substantially since the *Alabama-Tennessee* and *Midwestern* decisions, nor does the Commission point to any such change in circumstances divorced from the effect of the Tax Reform Act itself.

3. In the interest of brevity, the Philadelphia Gas Works hereby incorporates, as if set out at length, each and every one of the specific exceptions to the Commission's Opinion 578 contained in the application for rehearing of the Memphis Light & Water Division filed herein.

WHEREFORE, Philadelphia Gas Works prays that the Commission grant rehearing of its Opinion No. 578 and the accompanying Order and that upon such rehearing it vacate the said Opinion and Order and require Texas Gas to con-

2840

tinue the use of accelerated depreciation with flow through.

Respectfully submitted,

PHILADELPHIA GAS WORKS DIVISION
OF UGI CORPORATION

By: /s/ ROBERT W. MARIS
Robert W. Maris
Richard Bazelon
2600 The Fidelity Building
Philadelphia, Penna. 19109
Its Attorneys

dated: July 2, 1970

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2845

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

(Docketed July 17, 1970)

SETTLEMENT—Pipeline Rates

Before Commissioners: John N. Nassikas, Chairman; Lawrence J. O'Connor, Jr., Carl E. Bagge, John A. Carver, Jr., and Albert B. Brooke, Jr.

Docket Nos. RP69-41, RP70-14

TEXAS GAS TRANSMISSION CORPORATION

Order Approving Rate Settlement

(Issued July 17, 1970)

Texas Gas Transmission Corporation (Texas Gas), on June 12, 1970, filed a motion for approval of settlement in the above captioned proceedings, together with a Stipulation and Agreement which it proposes as the basis for settlement. Texas Gas requests that the Commission approve the Stipulation and Agreement in settlement and disposition of all issues involved in these proceedings, with the exception of tax depreciation, as described therein, which is reserved for decision by the Commission. The company requests waiver and special permissions with respect to the requirements of the Commission's Regulations to the extent necessary to effectuate all of the provisions of the Stipulation and Agreement.

The proceeding in Docket No. RP69-41 involves Texas Gas' filing of June 27, 1969, for an increase in jurisdictional rates of $36,813,407 annually, based on volumes for the twelve months ending March 31, 1969, as adjusted. The

proposed increased rates were suspended by the Commission by order issued August 11, 1969. The proposed rates, reduced by approximately $4,350,000 to reflect reductions in the company's purchased gas costs and the Federal income tax surcharge, became effective on January 12, 1970, subject to refund.[1]

2346

Texas Gas' filing of November 7, 1969, in Docket No. RP70-14 proposed an increase in jurisdictional rates of $5,031,437 annually over and above the rates filed in Docket No. RP69-41 and is designed solely to track the rate increase filed by its supplier, United Gas Pipe Line Company, in Docket No. RP70-13. By order issued December 15, 1969, the Commission suspended the proposed increased rates and consolidated Docket No. RP70-14 with Docket No. RP69-41. The increased rates proposed in Docket No. RP70-14, aggregating approximately $37,600,000 above the rates in effect prior to January 12, 1970, became effective on May 16, 1970, subject to refund. The proposed settlement would reduce Texas Gas' proposed rates by approximately $7,300,000 and accordingly would result in a rate increase of approximately $25,200,000 annually as of January 12, 1970, which would be increased to $30,300,000 annually as of May 16, 1970.

The proceedings were divided into two phases. The issues involved in the initial phase were rate of return and related income taxes and the question whether Texas Gas should be allowed to change from liberalized tax depreciation with flowthrough for the purpose of determining the Federal income tax allowance in the cost of service, from which its jurisdictional rates are derived. Upon motion of Staff counsel concurred in by all parties, the Commission, by notice dated December 23, 1969, waived

[1] The proposed rate increase was accordingly reduced to approximately $32,463,000 annually.

the intermediate decision on the Phase I issues. Conferences were held among Texas Gas, the interveners and the Commission Staff to explore the possibility of settlement of all issues in these proceedings. The Stipulation and Agreement which is here under consideration is the result of the various conferences.[2]

The principal provisions of the settlement proposal, which are more fully set forth in the Stipulation and Agreement, may be summarized as follows:

(1) Within ten days after the date upon which the Commission's order approving the Stipulation and Agreement

shall become final and non-appealable, Texas Gas shall: (a) file revised tariff sheets which reduce its jurisdictional rates to the levels set forth in Appendix A of the Stipulation and Agreement, effective January 12, 1970 through May 15, 1970 and refund, with interest at 8.5% annually, for that period the amounts collected in excess of the rates set forth in Appendix A; and (b) reduce its jurisdictional rates to the levels set forth in Appendix B of the Stipulation and Agreement, effective May 16, 1970, and refund, with interest at 8.0% annually, amounts collected in excess of the rates set forth in Appendix B.

(2) If, as a result of the Commission's decision and order with respect to the tax depreciation issue, Texas Gas is required to continue to use liberalized depreciation with flow-through, Texas Gas shall reduce its jurisdictional rates by $4,400,000 annually and make appropriate refunds as provided in Article II.

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[2] While the rate of return issue would be disposed of by the Stipulation and Agreement, the tax depreciation issue was determined by our Opinion No. 578 and accompanying order, issued June 3, 1970, in these proceedings.

(3) Texas Gas may increase its rates to reflect rate increases of its suppliers and shall reduce its rates to reflect supplier rate reductions, from time to time until November 1, 1971, in accordance with the provisions of Article III.

(4) Texas Gas shall refund to its jurisdictional customers the appropriate portion of any refund, together with interest thereon, received from any of its gas suppliers, which is applicable to purchases of gas by Texas Gas from such suppliers during the term of the Stipulation and Agreement, in accordance with the provisions of Article IV.

(5) Texas Gas may file to increase its jurisdictional rates to reflect the Federal income tax surcharge and if the surcharge is reduced or eliminated Texas Gas will reduce its rates accordingly but in no event below the level of a 2½% surcharge, as provided in Article VI.

(6) Except for rate filings to track supplier rate increases, the Federal income tax surcharge, or increased costs attributable to minimum Federal safety standards for the transportation of gas and pipeline facilities,

established by the Secretary of Transportation, Texas Gas will not file for an increase in its jurisdictional rates which will become effective prior to November 1, 1971, after suspension, if any.

(7) No provision of the Stipulation and Agreement shall prejudice the rights which any party may have with respect to the Commission's Opinion No. 578 and accompanying order issued June 3, 1970, relating to the tax depreciation issue in these proceedings.

Copies of Texas Gas' motion and the proposed Stipulation and Agreement were served on all parties to these proceedings, all of Texas Gas' jurisdictional customers and interested state commissions. Notice of the filing was published in the Federal Register (35 F.R. 10251). Comments and objections to the proposed settlement were filed by Memphis Light, Gas and Water Division of the City of Memphis, Tennessee (Memphis) and the Public Service Commission of the State of New York (New York) on June 30, 1970. Texas Gas filed responses thereto on July 6, 1970.

Memphis objects to the Stipulation and Agreement on the grounds that: (1) the recitation of the reserved tax depreciation issue in the Introduction is not accurate as it fails to refer to Texas Gas' request to change to straight line depreciation and consequently would prejudice Memphis' claim that the Commission's Opinion No. 578, has denied it due process by permitting liberalized depreciation with normalization rather than deciding the issue of whether Texas Gas should be required to continue on liberalized depreciation with flow-through or be allowed to utilize straight line depreciation; and (2) Article III, as presently composed, does not reflect Memphis' agreement to tracking as it would permit Texas Gas, in addition to tracking supplier price changes, to track changes in purchased gas costs attributable to changes in purchase patterns which is unlawful under the Commission's Regulations and Section 4 of the Natural Gas Act. Memphis proposes revisions in the Stipulation and Agreement consistent with its objections and also proposes that the specified levels of accumulation of Texas Gas' supplier refunds which activate its refund obligation and interest obligation thereon, respectively, be reduced and that interest accumulate from the date the specified aggregate sum of refunds exists in lieu of thirty days thereafter.

New York opposes the settlement on the grounds that it apparently is predicated on a rate of return of 8.0%, 0.5% higher than this Commission has allowed any natural gas pipeline. New York says that the 8.0% would be increased to 8.6% when consideration is given to the fact that liberalized depreciation with normalization, as authorized by Opinion No. 578, in effect allows Texas Gas an additional return of $4,400,000, the difference, as stipulated to in the proposed settlement, between liberalized depreciation with flow-through and straight line depreciation.

We do not believe that the proposed Stipulation and Agreement prejudices Memphis with respect to the issue of due process which Memphis has raised with regard to Opinion No. 578. We believe that its rights with respect to any claim it may make regarding that opinion are fully preserved by the provisions of Article XII of the Stipulation and Agreement.

Memphis' objections to the tracking provision in Article III are not well founded. Memphis states that it does not agree to the provisions of Article III because our regulations under the Natural Gas Act prohibit the inclusion of a purchased gas adjustment clause in a pipeline company's tariff. As Texas Gas points out, while we have not approved a purchased gas adjustment clause for a pipeline company, we have, as a matter of policy, permitted pipelines to track rate increases of their suppliers. We have permitted tracking primarily to eliminate the necessity for a pipeline to make a complete filing under Section 154.63 of the Regulations under the Natural Gas Act, each time one or more of its suppliers makes a price change which increases its purchased gas costs, and accordingly to reduce the number of rate filings which would otherwise be required. Memphis has construed our policy too narrowly. In adopting this policy it was not our intention

to preclude the filing of tracking increases, due to supplier price changes, which also reflect changes in purchase patterns.[8]

2850

Such a tracking provision is designed to permit the pipeline to recover nor more than the cost of purchased gas which it actually incurs. Furthermore, Article III is designed to cover decreases in suppliers' rates as well as increases. Article III thus is consistent with our tracking policy and at the same time would assure Texas Gas' customers of receiving the benefits of any Texas Gas' reduced gas costs due to changes in purchase pattern, whenever the tracking provision is activated. With regard to Memphis' proposed revision of the provisions of Article IV relating to refund and interest obligations it is our view that those provisions are reasonable and appropriate and that Memphis has not shown sufficient reasons for any change therein.

New York's objections are not well-taken. The Stipulation and Agreement does not specify a rate of return and we are not, by this order, approving a specific rate of return for Texas Gas. As stated in Article XII, the Stipulation and Agreement merely represents a dollar settlement with respect to Texas Gas' rates. Even assuming that the Stipulation and Agreement specified a rate of return of 8.0% or some other figure, any amounts included in Texas Gas' Federal income tax allowance in its cost of service due to the use of liberalized depreciation with normalization does not represent additional return to Texas Gas, as New York contends. The difference be-

[8] In our order issued April 28, 1969, in *Michigan Wisconsin Pipe Line Company*, Docket No. RP68-20, as amended by orders issued October 29, 1969 and March 31, 1970, we approved a rate settlement which provided for a tracking provision similar to that contained in Article III of the Stipulation and Agreement herein, in that it permits tracking filings which reflect changes in purchase patterns.

tween taxes collected through its rates and taxes actually paid would be credited to Account 282, Accumulated Deferred Income Taxes—Liberalized Depreciation and would remain available as a contingency reserve for the payment of income taxes which in any future year might be greater because of the prior use of liberalized depreciation. Moreover, no return would be allowed on the balances accumulated in Account 282 as they would be deducted from the rate base in accordance with our Opinion No. 578.

For the reasons stated above we conclude that the objections of Memphis and New York are without merit and do not require any revisions to the Stipulation and Agreement as proposed.

2851

Based upon our review of the terms and provisions of the Stipulation and Agreement, the objections and responses thereto, and the record in these proceedings, we conclude that the proposed settlement provides a reasonable and appropriate disposition of the issues herein.

The Commission finds:

The settlement of these proceedings on the basis of the Stipulation and Agreement submitted by Texas Gas on June 12, 1970, is reasonable and proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved and made effective.

The Commission orders:

(A) The Stipulation and Agreement submitted by Texas Gas on June 12, 1970, and incorporated herein by reference, is approved and made effective.

(B) Texas Gas shall fully comply with each of the provisions of the Stipulation and Agreement and of this order.

(C) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, Texas Gas, or any other party or person affected by this order, in any proceeding now pending or hereafter instituted by or against Texas Gas or any other person or party.

By the Commission.

(SEAL)

GORDON M. GRANT,
Secretary.

2852

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Opinion No. 578-A

Docket Nos. RP69-41, RP70-14

TEXAS GAS TRANSMISSION CORPORATION

Opinion and Order Denying Rehearing

Issued: July 21, 1970

DC-53

2853

(Issued July 21, 1970)

NASSIKAS, Chairman:

1. The Memphis Light, Gas & Water Division (Memphis) on June 29, 1970, the Public Service Commission of the State of New York (New York) on July 2, 1970, and the Philadelphia Gas Works Division of UGI Corporation (PGW) on July 6, 1970,[1] have filed applications for

[1] July 3, 4, and 5, 1970, were United States Government holidays.

rehearing with respect to our Opinion No. 578 and order issued June 3, 1970, in the above-entitled proceeding. In Opinion No. 578 and order we permitted Texas Gas Transmission Corporation to use liberalized depreciation with normalization with respect to property other than its post-1969 property, which is subject to election under Section 441 of the Tax Reform Act of 1969, 83 Stat. 487, to abandon use of liberalized depreciation for tax purposes. Under our Order No. 404, Statement of Policy, issued May 15, 1970, instead of reverting to straight-line depreciation the electric or natural gas pipeline company making the election is permitted to employ the normalization method for accounting as well as ratemaking. In most cases the points made on rehearing have been considered in Opinion No. 578, and any further discussion would be superfluous, but in other cases additional comments, in our opinion, would indicate more clearly the basis of our opinion.

2854

2. Memphis and New York contend that we deprive them of due process of law in permitting Texas Gas to adopt liberalized depreciation with normalization for the non-elective properties. New York says the sole depreciation issue was whether Texas Gas should be granted permission to abandon liberalized depreciation with flow-through in order to change to straight-line depreciation for tax purposes. The Presiding Examiner provided that the hearing should be phased in accordance with our order of August 11, 1969, 42 FPC 511. He stated that "In Phase I the issues of rate of return and related income tax will be tried, and the issue of the return from accelerated to straight-line depreciation, insofar as the principle thereof is involved" (Tr. 69-70). The Tax Reform Act and our Order No. 404 dealt with the property subject to election. With respect to the property not subject to election it seems clear that, if properly supported by the record, we could deny Texas Gas' request to depart from liberalized

depreciation, or we could grant it. We could also prescribe other solutions to the problem. In this instance the use by Texas Gas of liberalized depreciation with normalization, while it increases the tax costs to its customers, has some advantages over a reversion to straight-line depreciation for tax purposes. Normalization, as our opinion indicates, would improve the company's cash position, would, in effect, provide it with an interest free fund, and, because of the deduction of the accumulated reserves in Account 282 from the rate base, would reduce the company's cost of service and benefit consumers. This is a solution which we find more in the public interest than reversion to straight-line depreciation, and we could have treated Texas Gas for ratemaking purposes as though it were following this course. Compare *Midwestern Gas Transmission Co.*, 36 FPC 61 (1961), aff'd 388 F. 2d 444 (7th Cir.), *cert. denied* 392 U.S. 928 (1968). Therefore the letter from Counsel for Texas Gas dated May 22, 1970, which we quote in our original opinion, does not change the nature of the proceedings or introduce a new issue. It merely shows that the company does not oppose the solution which we find preferable.

3. New York argues that there are relationships between the tax depreciation issue and the rate of return allowance, so that the Commission was not free to decide one of the issues without deciding the other. As explained in Opinion No. 578 the rate of return issue was subject to settlement negotiations which have now resulted in a settlement approved by the

Commission. In that order it is pointed out that use of liberalized depreciation with normalization does not represent additional return to Texas Gas.

4. Memphis and New York also argue that we improperly founded our determination on management discretion. This

was not our purpose. Because of the election authorized by the Tax Reform Act it is our opinion, as expressed in Opinion No. 578, that tax costs under the flow-through method could increase in the future with undesirable rate consequences. While our findings and conclusions were supported by the judgment of management, we were not basing them on management discretion but on our own judgment of the facts and the law.

5. They argue, further, that the Tax Reform Act or its legislative history do not permit or require us to allow the use of liberalized depreciation with normalization. Section 441 of the Tax Reform Act, it is true, does not require a change from flow-through to normalization, but providing an election with respect to post-1969 property changes the economic conditions with respect to the use of flow-through on existing property. New York quotes the Conference Report [3] to the effect that a taxpayer is not permitted to use accelerated depreciation unless it uses normalization but that this rule does not apply to a taxpayer presently using flow-through. However, this is not inconsistent with our permitting a change from flow-through to normalization.

6. PGW argues similarly that the Tax Reform Act did not confer on us additional power to permit an abandonment of flow-through in the absence of a justifying change in factual circumstances unrelated to the effect of the Tax Reform Act. We see no reason why the impact of the Tax Reform Act may not be a circumstance that might militate in favor of permitting Texas Gas to abandon flow-through accounting. As already noted, the Tax Reform Act permits the company to abandon flow-through with respect to post-1969 elective property. This changes

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[3] Conference Report No. 91-782, U. S. Code Congressional and Administrative News, p. A-785.

2856

the effect of liberalized depreciation with flow-through on the Company and its customers. For the reasons set forth in Opinion No. 578 we accordingly permitted Texas Gas to abandon flow-through for ratemaking and accounting and employ normalization.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the above applications for rehearing and motions for stay present no facts or legal principles which would warrant any change in or modification of Opinion No. 578 and order of June 3, 1970.

The Commission orders:

The applications for rehearing filed by Memphis, New York and PGW are denied.

By the Commission.

(SEAL)

GORDON M. GRANT,
Secretary.